



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPC FF
For the tenants: CNC FF

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for an order of possession for cause and to recover the cost of the filing fee. The tenant applied to cancel the 1 Month Notice to End Tenancy for Cause dated August 29, 2016 (the “1 Month Notice”) and to recover the cost of the filing fee.

The landlord, the daughter of the landlord, the tenant, and two witnesses for the tenant attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

Neither party raised any concerns regarding the service of documentary evidence.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled or upheld?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on January 15, 2016. Monthly rent in the amount of \$1,325.00 is due on the first

day of each month. A security deposit of \$662.50 was paid by the tenant at the start of the tenancy.

The tenant confirmed receiving the 1 Month Notice dated August 29, 2016 on August 29, 2016. The effective vacancy date listed on the 1 Month Notice was September 30, 2016. The tenant disputed the 1 Month Notice on September 7, 2016 which is within the permitted 10 day timeline under section 47 of the *Act*. The landlord listed the following reason on the 1 Month Notice:

- Tenant has assigned or sublet the rental unit/site without landlord's written consent

The tenant confirmed that she has two roommates that assist her with the rent but that she has not created a tenancy with either of her two roommates. The tenant stated that her roommates were with her when she signed the tenancy agreement. The landlord confirmed that he has not seen a tenancy agreement between the tenant and her roommates.

There is no dispute that the tenant continues to occupy the rental unit and pays the monthly rent when it is due in accordance with the tenancy agreement.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a 1 Month Notice, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1 Month Notice is valid, the 1 Month Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In the matter before me, the landlord listed one cause on the 1 Month Notice; the tenant has assigned or sublet the rental unit without the landlord's written consent. Firstly as the tenant continues to occupy the rental unit, the tenant could not have assigned the tenancy. Secondly, the tenant testified that she has two roommates and has not entered into a tenancy agreement with her roommates which the landlord did not dispute. As a result, I find the landlord has provided insufficient evidence to support that the tenant

has sublet the rental unit without the landlord's written consent. As the landlord has failed to prove that the 1 Month Notice was valid, **I cancel** the 1 Month Notice dated August 29, 2016. The 1 Month Notice is of no force or effect.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

The landlord's application is dismissed due to insufficient evidence.

As the tenant's application had merit, I grant the tenant the recovery of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*. **I authorize** the tenant a one-time rent reduction of **\$100.00**, which may be deducted from rent for a future month on a one-time basis, in full satisfaction of the recovery of the cost of the filing fee for the tenant.

As the landlord's application did not have merit, I do not grant the landlord the recovery of the cost of the filing fee.

Conclusion

The tenant's application is successful. The tenant has been granted a one-time rent reduction of \$100.00 in full satisfaction of the recovery of the cost of the tenant's filing fee, as the tenant's application had merit.

The landlord's application is dismissed.

The 1 Month Notice dated August 29, 2016 has been cancelled due to insufficient evidence. The tenancy has been ordered to continue until ended in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 7, 2016

Residential Tenancy Branch

