



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel a One Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the Notice to End Tenancy?

Background and Evidence

The parties agreed that this tenant signed a tenancy agreement which shows that the tenancy started on May 01, 2015. Rent for this unit is \$1,690.00 per month due on the 1st of each month. The tenant paid a security deposit of \$845.00 on March 23, 2015.

The landlord testified that this tenant's sister originally lived in the rental unit and had a tenancy agreement with the landlord. This sister rented the entire unit but sublet two

rooms to other occupants. The sister informed the landlord that her visa had expired and she had to temporally leave Canada but wanted permission to sublet the unit and have it managed by her brother (the current tenant) while she was away. The landlord testified that this sister then asked that her brother take over the tenancy as it would be easier for him to have the responsibility if he is the tenant.

The landlord testified that she entered into a tenancy agreement with this tenant on March 23, 2015 and it was her assumption that he was going to live in the unit and sublet two rooms out to other occupants; instead he sublet the entire unit. The actual owners of the property are the landlord's parents and they had some worries over this arrangement as they would not have any control over the sublet tenants. The landlord was informed that the unit had been sublet on March 20, 2015 and that the current tenant had responsibility for the unit.

The landlord asked the tenant if the landlord could have the contract with the sublet tenants. The tenant said he wanted to leave it the way it was. The landlord testified that she told the tenant that if he was adamant about leaving it the way it was the landlord wanted him to sign a new contract with certain conditions to include things to cover damages by the sublet tenants to protect the owners of the unit.

The landlord testified that as the tenant did not want to sign a new contract then the landlord served the tenant with a One Month Notice to End Tenancy for cause (the Notice) on September 20, 2016 in person. A copy of the Notice has been provided in documentary evidence. It has an effective date of October 31, 2016 and provided one reason to end the tenancy as follows:

The tenant has assigned or sublet the rental unit without the landlord's written consent.

The tenant disputed the reason given on the Notice. The tenant testified that the landlord was fully aware that the tenant lived somewhere else and only became the tenant to take on the responsibility for the unit while his sister was overseas. The tenant testified that the landlord had agreed with his sister that the unit could be sublet and that

the tenant would sign a lease for the unit and then sublet it while acting as landlord for the sublet tenants.

The tenant seeks to have the Notice cancelled as the landlord had given permission for the unit to be sublet. The tenant also seeks to recover the filing fee of \$100.00 from the landlord.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows: the landlord did agree that the unit could be sublet when the original tenant moved overseas and also agreed that the original tenant's brother would become the tenant to take over the responsibility of the unit. There was no mention in these written negotiations between the original tenant, her brother or the landlord that the current tenant would actually live in the unit and just sublease two rooms out and therefore I find this is an assumption on the landlord's part.

Once a landlord has given permission for the unit to be sublet and the tenant goes ahead and sublets the unit then the landlord may not change their mind and serve a Notice to the tenant saying that permission to sublet or assign the tenancy was not given. The emails clearly show the correspondence between the parties and the landlords permission for the sublet to take place and that the original tenant's brother would assume the tenancy and take on the responsibility for the tenancy. I therefore find the Notice served to the tenant on September 20, 2016 has no merit and there is insufficient evidence from the landlord to show that the tenancy should end.

I therefore allow the tenant's application to cancel the Notice.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated September 20, 2016 is cancelled and the tenancy will continue.

As the tenant has been successful in setting aside the Notice, the tenant is entitled to recover the **\$100.00** filing fee for this proceeding and may deduct that amount from their next rent payment only when it is due and payable to the landlord.

This decision 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 21, 2016

Residential Tenancy Branch