



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter re SUPERMEN PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened to deal with an application by the tenant under the *Residential Tenancy Act* (the “Act”) seeking an order cancelling a 1 Month Notice to End Tenancy for Cause dated February 2, 2017 (the “1 Month Notice”).

The tenant appeared with a witness whose testimony was not required. The landlord was represented by a property manager. The landlord also had a witness available and his testimony was also not required. Both parties had full opportunity to be heard, to present affirmed testimony, to make submissions, and to present documentary evidence.

Service of the tenant’s application, notice of hearing, and evidence was acknowledged by the landlord.

At the outset of the hearing the manager advised that the named landlord was the owner of a company which owns and/or manages the building in question. I have amended the style of cause to include the corporate landlord.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Background and Evidence

Neither party submitted a copy of the tenancy agreement, which the tenant said was delivered by the landlord months after the tenancy actually began. It was agreed that this tenancy began in or around October of 2016, with a monthly rent of \$800.00, and that it is a month to month tenancy. The manager said that rent was due on the first of the month. The tenant understood that he had until the fifth of the month to pay rent.

The manager testified that she personally served 1 Month Notice, dated February 2, 2017, on the tenant on the same day. The tenant was not sure whether he had received it on the 2nd or the 4th. No proof of service document was in evidence. The tenant applied to dispute the 1 Month Notice on February 9, 2017.

The 1 Month Notice alleges repeated late payment of rent and unauthorized sublet or assignment as “cause” for ending the tenancy. The manager also stated that the tenant was in arrears and that other tenants had complained about his noise and conduct. The witness attending on behalf of the landlord was prepared to give evidence about the tenant’s conduct. As the 1 Month Notice did not allege non-payment of rent or substantial interference with other tenants, I cannot consider those matters at this hearing.

The landlord did not submit any documentary evidence. The manager testified that she had been managing the building in question for about three months and that the prior manager and the tenant had agreed that the tenant’s girlfriend could not reside in the tenant’s suite. The manager said that the tenant’s girlfriend has been living in the rental unit in breach of the agreement and that this was an unauthorized sublease or assignment as indicated in the 1 Month Notice.

The tenant in response said that his girlfriend comes over about 2-3 days a week and that otherwise she resides on an island with her elderly parents. Sometimes she comes over when she is ill to avoid exposing her parents to her illness.

The manager also testified that rent is due on the first of the month and that the tenant “always” pays mid-month, and about ten 10 Day Notices for Non-Payment of rent had been served on the tenant.

The tenant in response admitted that his rent has been late the last two months because the agency responsible for paying it directly to the landlord has made a mistake. He says the landlord cannot possibly have issued him as many 10 Day Notices as the manager says because he has only been living in the rental unit for 6 months.

The tenant also complained about substandard conditions in the rental unit and the common areas which he says the landlord has been slow to address. Again, these are not relevant to the application before me today and I cannot consider them here.

Analysis

Section 47(1)(b) of the Act allows a landlord to end a tenancy for cause where the tenant has been repeatedly late paying rent. Section 47(1)(i) allows for the same where the tenant has purported to assign or sublet the tenancy agreement without the landlord's written consent. Unless the tenant agrees that the tenancy will end, the tenant must dispute a notice under this section by filing an application within 10 days of receipt. In this case the tenant has filed within the applicable time period.

Once a tenant disputes a notice, the burden is on the landlord on a balance of probabilities to establish the cause alleged.

Here, the landlord has not established that the tenant has sublet or assigned the rental unit without its consent. As per the Residential Tenancy Policy Guideline #19, an assignment occurs when a tenant permanently transfers his right under a tenancy agreement to a third party, who becomes the new tenant. The landlord has not suggested that the tenant's girlfriend has replaced the tenant. A sublet occurs when the original tenant temporarily subleases the rental unit to a subtenant. The tenant thus becomes the landlord of the subtenant. The landlord has not established that this has occurred either. The landlord is simply suggesting that the tenant has had a guest he is not supposed to have.

Nor has the landlord established that the tenant has paid rent late repeatedly. The manager attending the hearing today has only been involved for three months and the tenant's payment history was not before me. There were no accounting documents or ledgers recording the tenant's payment dates.

Residential Tenancy Policy Guideline #38 suggests that at least three late payments are required to establish repeated late payment. The tenant admits only two. Moreover, he says that these late payments are the result of an administrative error outside of his control, which Policy Guideline #38 says can be a relevant consideration.

A landlord may also waive its right to insist on timely payment if it has not made clear that it will not tolerate late payment. Here, the landlord has not included the tenancy agreement establishing that rent is due on the first in evidence. It claims that the tenant "always" pays rent late but has not included any evidence that it has cautioned the tenant that it will not tolerate late payment of rent. It has not included the many 10 Day Notices it says it has issued. The tenant testified that he understood he is allowed to pay after the first of the month.

Based on the conflicting testimony and in the absence of any documentary evidence, I find that the landlord has not established that there is cause to end the tenancy for repeated late payment of rent.

As the landlord has not established on a balance of probabilities that there is cause to end the tenancy under s. 47 of the Act for either of the reasons alleged, I cancel the landlord's 1 Month Notice.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The landlord's 1 Month Notice is cancelled. The tenancy will continue until ended in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 10, 2017

Residential Tenancy Branch