Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>   CNC, FF

<u>Introduction</u>

This hearing commenced at 9:30 a.m. on this date, via teleconference call, and dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause ("1 Month Notice"). The tenant and persons assisting her appeared at the hearing; however, the landlord did not appear despite leaving the teleconference call open until 9:45 a.m. The tenant's witness testified that he observed the tenant's husband personally serve the hearing documents to the landlord on March 8, 2017 at the landlord's residence which is also the manager's unit in the building. I confirmed that the location of service is the landlord's service address as provided on the 1 Month Notice and I was satisfied the landlord was duly notified of this proceeding. Therefore, I continued to hear from the tenant without the landlord present.

I noted that I did not have a copy of the 1 Month Notice in the file before me. I asked the tenant to read the content of the document into evidence. I was satisfied that the document read to me and the subject of this proceeding is a 1 Month Notice to End Tenancy for Cause in the approved form.

I heard that there is only one tenant named on the tenancy agreement yet there are two tenants identified on this application. I heard that the tenant's husband lives in the rental unit with the tenant but he is not a tenant named on the tenancy agreement. The tenant's husband filed the tenant's Application for Dispute Resolution on her behalf as she was out of the country when the 1 Month Notice was served. I amended the application to exclude the tenant's husband as a named tenant. Accordingly, this decision identifies only the tenant named in the tenancy agreement and on the 1 Month Notice.

<u>Issue(s) to be Decided</u>

Should the 1 Month Notice to End Tenancy for Cause dated February 28, 2017 be upheld or cancelled?

Background and Evidence

I heard that the landlord personally served the tenant's husband with a 1 Month Notice to End Tenancy for Cause on February 28, 2017. The 1 Month Notice is signed and dated by the landlord on February 28, 2017 and indicates two reasons for ending the tenancy on the second page:

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

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

In the details of cause section of the 1 Month Notice, the landlord further indicates that the tenant has been in Europe and has sublet the rental unit and that there are two uninsured vehicles on the property leaking oil.

The tenant's husband, on behalf of the tenant, filed to dispute the 1 Month Notice within the time limit for doing so.

Analysis

Where a Notice to End Tenancy given by a landlord comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

Given the landlord's failure to appear at the hearing or otherwise provide any evidence to support the reasons indicated on the 1 Month Notice, I find the landlord has not met his burden of proof and I cancel the 1 Month Notice.   Accordingly, the tenancy continues at this time.

I award the tenant recovery of the $100.00 filing fee paid for this application. As requested by the tenant, I authorize the tenant to deduct $100.00 from a subsequent month's rent in satisfaction of this award.

Conclusion

The 1 Month Notice dated February 28, 2017 has been cancelled and the tenancy continues at this time.

The tenant is authorized to deduct $100.00 from a subsequent month's rent in order to recover the filing fee paid for this application.

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: April 05, 2017

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Residential Tenancy Branch