



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, MNDC, OLC, PSF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Issue(s) to be Decided

Should the landlord's One Months' Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary order as claimed?

Is the tenant entitled an order requiring the landlord to comply with the *Act*, regulation, or the tenancy agreement?

Is the tenant entitled to an order requiring the landlord to provide services or facilities required by law?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord gave the following testimony:

The tenancy began on or about January 1, 2016. Rent in the amount of \$825.00 is payable in advance on the first day of each month. The tenant paid a security deposit of \$412.50 and a pet deposit of \$100.00. The landlord issued a One Month Notice to End Tenancy for Cause on February 27, 2017 for the following reasons:

- *Tenant is repeatedly late paying rent*

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *Tenant has assigned or sublet the rental unit/site without landlord's written consent.*

The landlord testified that the tenant was late in paying the rent from May 2016 to September 2016. The landlord testified that the rent has been on time since then. The landlord testified that the tenant walks his dog on the rooftop of the carport and that the dog leaves "excessive feces" everywhere. The landlord testified that other tenants are concerned about the feces everywhere especially when it rains and drips off of the roof onto the top of cars. The landlord testified that the tenant has sublet the unit without the landlords' written permission. The landlord requests an order of possession.

The tenant testified that he disputes all of the allegations made by the landlord. The tenant testified that he was "shocked" when he was served the notice to end the tenancy. The tenant testified that rent hasn't been an issue since September. The tenant testified that all tenants has access to the rooftop of the carport with their dogs. The tenant testified that the landlord posted a notice restricting access to the rooftop two weeks ago; which the tenant has complied with. The tenant testified that he has not sublet or assigned the unit at any time. The tenant testified that he has a two bedroom suite and has had a roommate at times which the landlord was aware of and has never advised him that it was an issue.

Analysis

When a landlord issues a notice under Section 47 of the Act they bear the responsibility in providing sufficient evidence to support the issuance of that notice. I address the grounds to which the landlord issued the notice and my findings for each as follows.

Tenant is repeatedly late paying rent.

Both parties confirmed that the tenant was late paying the rent for May 2016, July 2016, August 2016 and September 2016. Both parties also confirmed that it hasn't been an issue since September 2016. Residential Tenancy Policy Guideline 38 addresses this issue as follows:

*A landlord who fails to act in a timely manner after the **most recent** late rent payment may be determined by an arbitrator to have waived reliance on this provision.*

I find that the landlord did not address the issue in a reasonably timely manner and therefore has waived their reliance on this provision.

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*

The landlord testified that the tenant was walking his dog on the roof of a carport and that the dog left excessive feces behind. The tenant disputes this allegation. The tenant testified that he is not the only person in the building that has a dog that walks in that area. The tenant also testified that since a sign went up two weeks restricting access to the area, he doesn't take his dog there. The landlord has not provided sufficient evidence to support his allegation that the subject tenant was the only person that walked their dog in this area and leaving feces behind. In addition, the landlord did not dispute that the matter has since been resolved since the sign restricting access went up. Based on the above and on balance of probabilities, the landlord has not provided sufficient evidence to support the two noted reasons for issuing the notice.

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

The landlord testified that the tenant has sublet the unit without the landlords' written consent. The tenant testified that he has not sublet or assigned his unit at any time. The tenant testified that he has had roommates at different times during his tenancy which the landlord was aware of. The tenant testified that the landlord has not specifically asked him to stop having roommates or issued a caution letter. The tenant testified that the unit is a two bedroom and it's not unreasonable or excessive to have two people in the suite. The landlord did not dispute that they were aware that the tenant has had a roommate during his tenancy. The landlord also did not deny that the tenant still resides in the unit. Based on the above, the landlord has not provided sufficient evidence to support his claim that the tenant has sublet or assigned the unit without the landlords written consent and therefore has not proven this ground.

Based on the above, the One Month Notice to End Tenancy for Cause dated February 27, 2017 is hereby set aside; it is of no effect or force. The tenancy continues.

The tenant has also filed seeking the recovery of the registered mail costs incurred for this hearing. The Act does not provide the ability for an Arbitrator to award these costs, accordingly; I dismiss this portion of the tenants claim.

The tenant was also seeking an order to have the landlord provide services or facilities required by law. The tenant was silent on this point during the hearing. Based on the insufficient evidence before me, I hereby dismiss this portion of the tenants' application.

The tenant was also seeking an order to have the landlord comply with the Act, regulation or tenancy agreement. The tenant was silent on this point during the hearing. Based on the insufficient evidence before me, I hereby dismiss this portion of the tenants' application.

As the tenant has been only partially successful in their application, they must bear the cost of the filing fee.

Conclusion

The One Month Notice to End Tenancy for Cause dated February 27, 2017 is of no effect and force. The tenancy continues.

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 06, 2017

Residential Tenancy Branch