



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding H.E. ROOMS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. Both parties attended the hearing and had opportunity to be heard. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The landlord testified that since June 2017, the tenant has a visitor that accesses the rental unit by using the fire escape. The landlord also testified that this visitor spends a lot of time in the rental unit including overnight visits. The landlord stated that he has given the tenant verbal warnings and a written warning on July 02, 2017.

On July 02, 2017 the landlord also served the tenant with notice to end tenancy for cause. The reason for the notice is that the tenant has assigned or sublet the rental unit without the landlord's consent. The tenant disputed the notice in a timely manner.

The tenant agreed that her visitor uses the fire escape and does so because the landlord does not allow him to visit. The tenant also testified that her visitor has his own residence and does not live in the rental unit.

Analysis

In order to support the notice to end tenancy, the landlord must prove that the tenant has sublet or assigned the rental unit without the landlord's consent. *Residential Tenancy Policy Guideline#19* addresses assignments and sublets.

The use of the word 'sublet' can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit and has a subletting agreement with a sub-tenant. 'Sublet' is also used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. In determining if a scenario such as this is a sublet as contemplated by the Act, the arbitrator will assess whether or not the relationship between the original tenant and third party constitutes a tenancy agreement and a landlord/tenant relationship.

If there is a landlord/tenant relationship, the provisions of the Act apply to the parties. If there is no landlord/tenant relationship, the Act does not apply. Roommates and landlords may wish to enter into a separate tenancy agreement to establish a landlord/tenant relationship between them or to add the roommate to the existing tenancy agreement in order to provide protection to all parties under the legislation.

The landlord issued a one month notice to end tenancy because he believes that the tenant has sublet or assigned the rental unit to a third party. In this case the landlord agreed that the tenant continues to occupy the rental unit and that the rental unit is not large enough to accommodate two persons. In addition the landlord also stated that his main complaint is that the third party spends too much time in the rental unit and uses the fire escape to enter the rental unit. The landlord also stated that he observes the third party leaving the rental unit after his visits to the tenant.

Based on the testimony of both parties, I find on a balance of probabilities that it is more likely than not that the tenant's visitor spends a lot of time inside the rental unit but does not live there. I further find that since the tenant continues to occupy the rental unit the tenant has not sublet the rental unit as contemplated by the Act. Accordingly, the notice to end tenancy is set aside and the tenancy will continue.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.
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: September 21, 2017

Residential Tenancy Branch