



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDCL-S, FFL, CNC, LAT, LRE, OLC, RP, RR

Introduction

This hearing dealt with applications by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to sections 47 and 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant sought:

- cancellation of the One Month Notice pursuant to section 47;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order for the landlord to make repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

The landlord's agent (the landlord) and the tenant 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.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord testified that they served the tenant with the Landlord's Application for Dispute Resolution (Landlord's Application) by way of registered mail on October 04, 2017. The tenant confirmed that they received the Landlord's Application. In accordance with section 89 of the Act, I find that the tenant was duly served with the Landlord's Application.

The landlord testified that they served the tenant with their evidentiary package by way of registered mail on October 12, 2017. The tenant confirmed that they received the landlord's evidentiary package. In accordance with section 88 of the Act, I find that the tenant was duly served with the landlord's evidentiary package.

The tenant testified that they served the Tenant's Application for Dispute Resolution (Tenant's Application) to the landlord by way of registered mail on September 19, 2017. The landlord confirmed that they received the Tenant's Application. In accordance with section 89 of the Act, I find the landlord was duly served with the Tenant's Application.

The tenant confirmed that they did not submit any evidence.

The landlord entered into evidence a signed and witnessed Proof of Service Document attesting to the fact that a One Month Notice was posted to the tenant's door on September 12, 2017. The tenant confirmed that they received the One Month Notice on this date. In accordance with section 88 of the Act, I find the tenant was duly served with the One Month Notice on September 12, 2017.

Preliminary Matters

Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure* states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

I find that the landlord and the tenant applied for numerous claims which are not related to the primary issue for this hearing concerning the One Month Notice. For this reason, the Tenant's Application for all issues, other than to dispute the One Month Notice, are dismissed, with leave to reapply. For the same reason the Landlord's Application for all

issues other than for an Order of Possession based on the One Month Notice and to recover the filing fee from the tenant are dismissed, with leave to reapply.

Issue(s) to be Decided

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

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

Background and Evidence

The landlord provided written evidence that this tenancy commenced on June 01, 2017, with a monthly rent of \$1,525.00, due on the first day of each month. The landlord testified that they currently retain a security deposit in the amount of \$762.50.

A copy of the landlord's September 12, 2017, One Month Notice was entered into evidence. In the One Month Notice, requiring the tenant to end this tenancy by October 31, 2017, the landlord cited the following reason for the issuance of the One Month Notice:

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

The landlord also submitted a copy of an advertisement for the rental unit that they found on a short term rental website, with two pictures of the rental unit on the advertisement, into written evidence:

The landlord testified that the tenant is renting out their rental unit to third parties. The landlord submitted that the residential manager at the residential premises has witnessed the tenant escorting a person with a suitcase out the door and thanking them for their stay. The landlord stated that they monitor certain websites to make sure that tenants are not subletting their rental units out as it against the terms of their tenancy agreement. The landlord further stated that upon witnessing the tenant escorting a guest out of the residential premises, they found the advertisement for the rental unit on a website for listing short term rentals. The landlord testified that the tenant amended their advertisement before the landlord was able to print a copy, but that the copy that they submitted into evidence has pictures of the rental unit on it.

The tenant testified that they were unclear about the rules regarding the sublet of the rental unit and that they have removed the advertisement from the internet. The tenant submitted that their guests have been staying with the tenant in a shared space for only a few days and that the tenant has been in the rental unit at the same time as their guests. The tenant stated that she initially had a roommate, who was listed on the tenancy agreement, at the beginning of her tenancy but that the roommate moved out and she needed the extra income to assist with her monthly rent.

Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. This section provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenant disputed this notice on September 19, 2017, and since I have found that the One Month Notice was served to the tenant on September 12, 2017, I find the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*.

I find the landlord bears the burden of demonstrating, on a balance of probabilities, that the tenant has assigned or sublet the rental unit without the landlord's consent.

The definition of what constitutes a sublet is very narrow and is contained in *Residential Tenancy Policy Guideline #19*;

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and a new agreement (usually called a sublease) is typically entered into by the original tenant and the sub-tenant. The original tenant remains the tenant of the original landlord, and, assuming that the original tenant moves out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant.

The use of the word 'sublet' can cause confusion because under the *Act* it refers to the situations 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, as described above. 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.

I find that the landlord has not provided sufficient evidence to demonstrate that a subletting agreement had been entered into between the tenant and a third party. I find that, although third parties rented out a space in the rental unit from the tenant, no evidence was presented by the landlord that the tenant entered into a tenancy agreement with the third party and that they had a landlord/tenant relationship. I note that section 4 of the *Act* specifically exempts living accommodation occupied as vacation or travel accommodation from the jurisdiction of the *Act*.

While it is not before me, I find the tenant may have breached other terms of the tenancy agreement. However, there is no evidence before me that, once the landlord identified that they thought the tenant was subletting, they discussed this with her or warned her that her tenancy might be in jeopardy prior to issuing the One Month Notice. While there is no requirement to provide such a discussion or warning when ending the tenancy for subletting or unless the tenant has breached a material term of the tenancy agreement, I am satisfied that once the tenant was made aware it was a problem she stopped renting her to short term renters.

Based on the evidence and affirmed testimony from all parties, I find the landlord has insufficient grounds to issue the One Month Notice and to end this tenancy for cause.

For this reason the One Month Notice is set aside and this tenancy continues until it is ended in accordance with the *Act*.

As the landlord has not been successful in their application, I dismiss the landlord's request for the filing fee, without leave to reapply.

Conclusion

The tenant is successful in their Application.

The One Month Notice is set aside and this tenancy will continue until it is ended in accordance with the *Act*.

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 08, 2017

Residential Tenancy Branch