



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC; OLC; FF; O

Introduction

This is the Tenant's Application to cancel a Notice to End Tenancy for Cause; for an Order that the Landlords comply with the Act, regulation or tenancy agreement; to recover the cost of the filing fee from the Landlords; and for "other" unspecified order(s).

Both parties attended the Hearing and gave affirmed testimony. It was determined that the Tenant served the Landlords with the Notice of Hearing documents by registered mail. It was also determined that the parties duly exchanged their documentary evidence.

Issue(s) to be Decided

Is the One Month Notice to End Tenancy for Cause issued August 15, 2017 (the "Notice"), a valid notice to end the tenancy?

Background and Evidence

The Landlords provided a copy of the tenancy agreement in evidence. The Tenant testified that he was not provided with a copy of the tenancy agreement until he received it in the Landlords' evidence package.

This tenancy began on June 1, 2009. The rental unit is a 3 bedroom house. Monthly rent was \$700.00 at the beginning of the tenancy. Rent is due on the first day of each month. No security deposit was required. The Tenant is still living in the rental unit.

Both parties provided copies of the Notice in evidence. The Notice was issued on August 15, 2017, and received by the Tenant on August 16, 2017.

The Notice provides the following reason for ending the tenancy:

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

The Landlord testified that the Tenant has rented out a portion of the rental unit to people who have not been approved by the Landlords. He stated that this was contrary to the tenancy agreement signed by the parties.

The Tenant testified that the Landlords knew about the other occupants and that the Tenant has repeatedly asked to sign a new tenancy agreement with the Landlords to include the other occupants. He stated that the Landlord has not presented the Tenant with a new tenancy agreement despite assuring the Tenant that he would do so.

The Tenant submitted the Notice is incomplete because it does not provide details in the "Details of Cause" section of the document.

The tenancy agreement provided in evidence by the Landlords is incomplete. For example:

1. Page one, paragraph 1, of the agreement identifies the Landlords and the Tenant; however, it does not specify the names of the "tenants and occupants allowed to live in the premises [with] the written consent of the landlord". There are no names listed at all, not even the Tenant's name.
2. Page two, paragraph 6, of the agreement does not specify if the agreement is a month-to-month tenancy, or a fixed term lease.
3. The tenancy agreement is not signed by the Landlords, but is signed by the Tenant.

Analysis

When a tenant seeks to cancel a notice to end the tenancy, the onus is on the landlord to show that the tenancy should end for the reason(s) provided on the notice to end the tenancy.

In this case, I find that the Landlords did not provide sufficient evidence.

The Notice provides the following reason for ending the tenancy:

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

I do not find that the Tenant has assigned or sublet the rental unit.

When a tenant **assigns** their rental unit, the tenant gives up all rights and responsibilities to the rental agreement and to the rental unit. When a tenancy is **assigned**, the tenant transfers their rights and responsibilities to another tenant. Following the assignment of a rental unit, the original tenant no longer occupies the rental unit and no longer pays rent. However, in this case, the tenant is still living in the rental unit and is responsible for paying the rent.

When a tenant **sublets** their rental unit, the tenant gives another person the right to occupy the rental unit for a specific period of time. The sublet agreement must end on a specific date, *which must be before the end of the tenant's rental term or period*.

The original tenant continues to be the person responsible for the tenancy. This includes responsibility for the condition of the rental unit and the payment of rent. The original tenant also retains the right to re-occupy the premises at the end of the sublet agreement. However, in this case, the term of the tenancy agreement is not for a specific period of time. It is a month-to-month tenancy agreement.

For the reasons provided above, I find that the Notice is not a valid notice to end the tenancy and it is cancelled.

The Tenant has been successful in his Application and I find that he is entitled to recover the cost of the \$100.00 filing fee. Pursuant to the provisions of the Act, the Tenant may deduct \$100.00 from future rent due to the Landlords.

The parties showed a willingness to work with each other and to negotiate and sign a new tenancy agreement. I encourage them to do so.

Conclusion

The Notice to End Tenancy for Cause issued August 15, 2017 is cancelled. The tenancy will continue until it is ended in accordance with the provisions of the Act.

The Tenant may deduct \$100.00 from future rent due to the Landlords.

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 30, 2017

Residential Tenancy Branch