



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RR, DRI AS

Introduction

The tenant applies to cancel a two month Notice to End Tenancy dated December 1, 2017 given for landlord use of property. She also seeks to dispute a rent increase and obtain permission to assign or sublet her tenancy.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the two month Notice a valid Notice given in good faith? Has a rent increase been lawfully imposed on the tenant? Is she entitled to assign or sublet her rental unit?

Background and Evidence

The rental unit is one side of a duplex. The other side is rented from the same landlord by Mr. R.B. and Ms. L.B, who attended the hearing.

The tenant's side of the building is composed of three floors with two bedrooms. The tenancy started in November 2001 under a prior landlord. There is no written tenancy agreement. As the result of a settlement reached at an arbitration hearing held November 2, 2017 to determine the landlord's claim for an extraordinary rent increase,

the rent was raised to \$1150.00 as of December 1, 2017 and is scheduled to rise again to \$1300.00 on April 1 and then to \$1450.00 on September 1, 2018.

The landlord holds a \$425.00 security deposit.

The landlord purchased the building in June 2017. She indicates she had planned to live in it from the very start of her ownership.

Shortly after purchase the landlord sought significant rent increases from the tenants in both rental units. The tenants did not agree.. The landlord applied (file number shown on cover page of this decision) for an extraordinary rent increase over and above that permitted to be imposed annually in accordance with the regulation set by government. It appears she sought to raise this tenant's rent to \$2000.00 per month.

Seven days after that hearing the landlord wrote the tenant to say she planned to occupy the unit as of March 1, 2018 and that an official Notice would follow. On December 1, 2017 the landlord issued the Notice in question, which has an effective date of February 28, 2018 to end the tenancy.

The landlord shows that she has booked a painter to paint the premises on her arrival and a mover to move her belongings there. She shows that she has already changed her telephone account and a bank account to show the new address.

The landlord testifies that she lives in a home belonging to her mother and that her mother is moving back to Canada on March 1, 2018 with a partner that she is not comfortable with. Her mother informed her of this in October 2017. She says she did not raise the matter at the arbitration hearing on November 2 because she had not decided which of the two units she would move into.

The tenant says she can see no reason the landlord wouldn't stay at her mother's home because there are two separate dwellings on the property. She is convinced that the landlord is doing a "renoviction;" whereby the landlord lives in the premises with the intent of conducting renovations and then re-renting at a much higher rent.

She says she was ready to move to a new place she'd found prior to the hearing on November 2 but with the agreement to a phased-in rent increase over the next ten months she felt she was secure in her present accommodation.

She says she has guests and roommates staying with her at the rental unit. For the most part they are students or else members of a hospitality club she belongs to. The former pay, the latter do not. She says the landlord has attempted to prohibit her from having other occupants without approval and so she seeks the order to permit her to assign or sublet her tenancy.

In response the landlord says that the tenant is engaged in short term rentals and has a makeshift third bedroom in the basement.

Analysis

The Two Month Notice

Section 49(3) of the *Residential Tenancy Act* (the “Act”) provides;

3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

By negotiating a rent increase settlement with the tenant for a phased increase over a number of months, I find that the landlord implicitly warranted that the tenancy would last into the Fall of 2018. She could not in good faith issue a Notice to End Tenancy for landlord use of property before then.

The tenant’s application to cancel the Notice is allowed. The Notice to End Tenancy dated December 1, 2017 is hereby cancelled.

Dispute of Rent Increase

The rent increase in question was a settlement reached by the parties at an arbitration hearing. Whether or not the tenant received questionable advice about a landlord’s right to such an increase, she has consented to the terms laid out at the previous hearing. They cannot be reviewed by or appealed from to another arbitrator

This item of the tenant’s application is dismissed.

Assignment and Subletting

There is no evidence that the tenant is assigning or subletting her rental unit. Residential Tenancy Policy Guideline 19, "Assignment and Sublet" defines those terms and states:

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the *Residential Tenancy Act*.

A tenancy agreement gives a tenant exclusive possession of a rental unit with only those restrictions imposed by the *Act* or those imposed by the tenancy agreement and which are not in conflict with the *Act*. In this case the tenant is, at best, having roommates. The only restriction imposed by the *Act* is that of the landlord's right to issue a one month Notice under s. 47 in the event that there are an unreasonable number of occupants. There is no tenancy agreement restricting who may or may not occupy the rental unit.

It has not been shown that the tenant is breaching any municipal bylaw or has been ordered by such an authority to cease such use.

Whether the landlord has insurance to cover such use is, frankly, an issue for the landlord, not the tenant who has rented without any restriction.

In result, the tenant has not assigned her tenancy agreement nor does she appear to be subletting her rental unit. If she proposed to do so she would be barred by s. 34(1) and (2) of the *Act*, which provide:

34 (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

(2) If a fixed term tenancy agreement has 6 months or more remaining in the term, the landlord must not unreasonably withhold the consent required under subsection (1).

It is implicit from these two sections that in the case of a periodic tenancy, not a fixed term tenancy, a landlord must consent in writing and such consent may be arbitrarily withheld.

Conclusion

The Notice to End Tenancy is cancelled. The remainder of the tenant's application is dismissed.

There was an indication the tenant wished to advance a monetary claim. There is no such claim made in her formal application and so I decline to deal with it. She is free to re-apply in that regard.

There is no claim for recovery of any filing fee.

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: January 26, 2018

Residential Tenancy Branch