



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC OLC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on January 22, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause (the Notice) pursuant to section 47; and,
- an order requiring the Landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

Neither the Landlord nor the Tenant raised any issues with respect to service of the Notice of Hearing, or the documentary evidence each party was relying upon during the hearing. Both sides confirmed they had copies of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss unrelated matters, with leave to reapply, on the Tenant's application with the exception of the following claim:

- to cancel the 1 Month Notice to End Tenancy for Cause.

Issues(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord issued the Notice for the following reasons:

- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*
- *Tenant has assigned or sublet the rental unit/site without landlord's written consent.*

The Tenant acknowledged receiving the Notice on November 9, 2017. Under the "Details of Cause" section on the Notice, the Landlord stated, "the Tenant has a roommate and refuses to remove the roommate violating the rental agreement."

During the hearing, the Landlord stated that the Tenant has lived in the rental unit for several years now and when he moved into the unit, he signed an agreement stating that the unit would only be occupied by one adult, and no more. The tenancy agreement provided into evidence states that "the premises shall be used as a private residence only by not more than 1 adult and 0 children." The Landlord stated that he knew that the Tenant had a girlfriend but he was unsure whether or not she was actually living in the rental unit until last summer (June of 2017). The Landlord stated that once he found out the Tenant's girlfriend was actually residing in the rental unit, he attempted to meet up and interview her, so that she could be added to the tenancy agreement. The Landlord stated that he set up a time in June of 2017 to go over and meet with the Tenant's girlfriend. However, the Landlord stated that when he went, the Tenant's girlfriend was not there. As a result, the Landlord stated that she was never added to the tenancy agreement because he wanted to meet her beforehand. The Landlord stated that his

relationship with the Tenant has degraded since that time, and he is now seeking to evict him because he has violated the terms of his tenancy agreement.

The Landlord stated that he gave the Tenant two written warnings for his girlfriend to move out. The Landlord provided a copy of an email, sent on October 18, 2017, which stated that there is to be one adult living in the rental unit and that he does not know, or approve of, the current roommate. In this email, the Landlord also stated that the Tenant had until the end of the month to have her move out (October 31, 2017). The Landlord also provided a copy of a written warning letter, which he served to the Tenant in person on October 25, 2017. This written warning says "as a follow up to the email notice given October 18, 2017, it is a violation of our rental agreement for you to have a roommate in your suite. Please have her move out by October 31, 2017."

The tenancy agreement provided into evidence states

The Tenant stated that it is discriminatory and unconscionable for him to be prevented from having a roommate in a rental unit of over 1,600 square feet. The Tenant stated that the Landlord has known for a while that his girlfriend was living there but did nothing until issues started to arise over the utility bills, more recently. The Tenant does not feel that having an extra person living in his unit should be grounds for eviction.

Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

I have reviewed the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the *Act*. I note the Tenant received the Notice on November 9, 2017, and applied to dispute it on November 17, 2017.

First, I turn to the second ground the Landlord selected on the Notice which is alleging that the Tenant has assigned or sublet the rental unit/site without landlord's written consent. In my consideration of this matter, I turn to Residential Policy Guideline #19 which states:

Assignment

Assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.

[...]

Subletting

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, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement.

I note that the Tenant is still actively living in the rental unit (and has been all along). I acknowledge that the Tenant has now lives in the rental unit with his girlfriend. However, I find the Tenant's girlfriend qualifies as a roommate and I do not find the Tenant has engaged in a sublease, or an assignment. As such, I find the Landlord has not established that there are sufficient grounds to end the tenancy on this cause.

Next, I turn to the first ground the Landlord identified on the Notice which is that the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. I note that the Landlord wrote an email on October 18, 2017, specifying that that there is to be one adult living in the rental unit and that he does not know, or approve of, the current roommate. At that time, the Landlord gave the Tenant until October 31, 2017, to move his girlfriend out of the rental unit.

The Landlord also provided a copy of a written warning letter, which says "as a follow up to the email notice given October 18, 2017, it is a violation of our rental agreement for you to have a roommate in your suite. Please have her move out by October 31, 2017."

I turn to Residential Tenancy Policy Guideline #8 which speaks to "Material Terms":

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

I note that the tenancy agreement lists only one adult. I also note that the Landlord wrote an email and followed up with a written warning letter about the additional occupant. However, I am mindful that nowhere in either of these warnings does it clearly state to the Tenant that the breach is "material" to the tenancy agreement, nor does it clearly state that the tenancy will end if the issue is not fixed. Although the Landlord placed a timeline on when the Tenant's girlfriend had to move out by, he was unclear about what would happen if she did not.

Ultimately, I find the written warnings by the Landlord do not sufficiently lay out the repercussion of ending the tenancy, should the Tenant fail to move his roommate out of the rental unit. This is a clear requirement, set out in Policy Guideline #8.

Overall, I find that the landlord has not provided sufficient evidence to support the reasons to end the tenancy; therefore, the Tenant's application is successful and the Notice received by the Tenant on November 9, 2017, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenant was successful with his application, I grant him the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

The Tenant may deduct the amount of \$100.00 from one (1) future rent payment.

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 25, 2018

Residential Tenancy Branch