



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding QUAY PACIFIC PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, RR, FFT

Introduction

This teleconference hearing was scheduled in response to an application for dispute resolution under the *Residential Tenancy Act* (the *Act*). The Tenant applied to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), for an Order for the Landlord to comply with the *Act* or tenancy agreement, for an order to reduce the rent for repairs, services or facilities agreed upon but not provided and for the recovery of the filing fee paid for this application.

The Tenant was present for the duration of the teleconference hearing as was an agent for the Landlord and the property owner (the “Landlord”). All parties were affirmed to be truthful in their testimony and were provided with the opportunity to testify, present evidence and ask questions of the other party.

The Landlord testified that they submitted their evidence to the Residential Tenancy Branch prior to the hearing, but did not serve copies to the Tenant. The Tenant confirmed that she did not have copies of the evidence submitted by the Landlord. In accordance with the Rules of Procedure, the documentary evidence that the Landlord submitted for the hearing will not be considered due to the evidence not being served to the tenant to provide her with the opportunity to review.

The Landlord testified that they received the Notice of Dispute Resolution Proceeding (the “Notice of Hearing”) from the Tenant as well as copies of the Tenant’s evidence. As such, the Tenant’s evidence will be considered as part of this decision.

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.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy be set aside?

Should an Order be issued for the Landlord to comply with the *Act* or tenancy agreement?

Should an Order be issued for a reduction in rent for repairs, services or facilities?

Background and Evidence

Both parties agreed that the tenancy began on August 1, 2015 with a tenancy agreement signed by the current Tenant, as well as a co-tenant. The co-tenant left the rental unit on January 31, 2017. Rent in the amount of \$2,292.35 is due on the first day of the month.

The Landlord testified that after the co-tenant moved out, the current Tenant allowed three other people to move into the home without permission. On April 13, 2018, the Landlord issued a One Month Notice and served the notice to the Tenant by registered mail. The reasons for the One Month Notice were listed as follows:

- 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 the landlord's written consent

The Landlord testified that the Tenant has breached a material term of the tenancy by subletting the rental unit to other people without first receiving written permission. The Landlord submitted that they have a right to know who is living in the home and were not aware that there were additional people living there.

The Landlord testified that no new tenancy agreement was signed after the former co-tenant moved out on January 31, 2017. The Tenant testified that her former co-tenant tried to sign a statement with the Landlord upon moving out to indicate that she was no longer a party to the original tenancy agreement. Evidentiary material was submitted by the Tenant of an email exchange between her former co-tenant and the Landlord requesting to have the former co-tenant's name removed from the tenancy agreement. The Tenant testified that her former co-tenant was never removed from the original

tenancy agreement and that no new agreement was signed between herself and the Landlord.

The Tenant testified confirming receipt of the One Month Notice through registered mail. Although she doesn't remember the exact date she received it, she testified that it was a few days after it was sent. As per Section 90 of the *Act*, the notice is deemed to have been received five days after sending it by mail, deeming receipt of the One Month Notice on April 18, 2018. The Tenant applied to dispute the One Month Notice on April 21, 2018, within the ten days allowable under Section 47(4) of the *Act*.

The Landlord testified that they became aware of the additional occupants in the rental unit in 2017, after the occupants had already moved in. In January 2018, they had issued a One Month Notice for the same reasons as listed on the One Month Notice dated April 13, 2018. The Tenant applied to cancel that notice and a hearing was scheduled regarding the dispute. The Landlord testified that a different agent for the Landlord was involved with that hearing and withdrew the One Month Notice at the hearing, stating that they did not have enough supporting documents to continue.

The Landlord testified that they provided written notice to the Tenant regarding the breach of the tenancy agreement prior to the issuance of the first One Month Notice on January 22, 2018. They did not provide any testimony regarding written notice provided to the Tenant since that time.

The Tenant testified that after her former co-tenant moved out, two additional people moved into the unit as roommates in March 2017. She submitted that she attempted to contact the Landlord to inform them of the roommates moving in, but was unable to get in contact with anyone and that attempts to contact the Landlord by phone were not successful due to the phone calls not being returned.

The Landlord testified that the Tenant knew various ways to reach them, including getting in contact with the owner instead of the property management company.

Both parties testified that there was no current tenancy agreement due to a new one not being signed after the former co-tenant left the rental unit. No tenancy agreement was submitted in evidence by either party. The Landlord asked to submit the tenancy agreement in evidence after the hearing and in accordance with Rule 3.17 of the Rules of Procedure, permission was granted. I did not find that either party would be prejudice by the submission of the tenancy agreement which they both signed.

However, the tenancy agreement was not submitted to the file at the time of this decision being written.

The Landlord submitted that the breach that the One Month Notice was based on is related to a term in the tenancy agreement stating that permission must be obtained before subletting or assigning the rental unit.

During the hearing, the Landlord read a statement from the tenancy agreement addendum that states that if additional people are living at the property aside from who is on the tenancy agreement, the property manager must be notified.

The Tenant submitted that she attempted to notify the Landlord of the occupants in the home, but was unable to connect with the Landlord until the Landlord came to the home in November 2017. The Tenant also testified that her understanding of the statement on the tenancy agreement addendum is that she must notify the Landlord of additional occupants, not ask for permission before they move in.

The Tenant applied for a reduction in rent based on the stress caused by the issuance of the two One Month Notices that led to a loss of her ability to enjoy the property. The Tenant submitted a Monetary Order Worksheet outlining a reduction of rent by 20% for the months of January, February, March, April and May 2018 for a total amount requested of \$2,290.00.

During the hearing, the Landlord responded by stating that the stress the Tenant may be experiencing is due to her own breach of the tenancy agreement, not from a loss that was caused by them. The Landlord submitted that they should always be aware of what is happening with the rental unit, including providing permission prior to anyone else moving in.

The Tenant also applied for an Order requiring the Landlord to comply with the *Act* or tenancy agreement and stated that the One Month Notices are being issued without cause and thus leading to stress regarding the uncertainty of her housing situation.

Analysis

The One Month Notice dated April 13, 2018 states that the tenancy was ending due to a breach of a material term as well as the Tenant assigning or subletting the rental unit without written consent of the Landlord.

In order to determine whether a material term of the tenancy agreement was breached, I refer to the *Residential Tenancy Policy Guideline 8 – Unconscionable and Material Terms*. This policy guideline defines a material term as the following:

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

Both parties testified that a tenancy agreement no longer exists due to the original co-tenant moving out, but I find that in the absence of a new written tenancy agreement, the original tenancy agreement signed in 2015 still stands. Unless a tenancy ends in accordance with Section 44 of the *Act*, the tenancy has not ended and a co-tenant moving out does not disregard the original tenancy agreement.

Although the tenancy agreement from 2015 was not submitted in evidence, both parties testified to the terms and I find that there is insufficient evidence to show that there is a material term regarding additional occupants in the rental unit. Based on the testimony of both parties, I also find that written notice regarding a potential breach was not provided to the Tenant prior to the issuance of the One Month Notice on April 13, 2018. Written notice must be provided in a Tenant breaches a material term of the tenancy act in accordance with Section 47(1)(h).

While both parties agreed that an addendum was signed stating that the Landlord must be notified regarding additional occupants, I do not find that this establishes the statement as a material term. I also find that the wording of this statement that was read during the hearing does not require the Tenant to request written permission to have additional occupants in the home, but only to notify the Landlord of who is living in the rental unit.

As for the cause on the One Month Notice regarding the Tenant assigning or subletting without written permission, I refer to the *Residential Tenancy Policy Guideline 13 – Rights and Responsibilities of Co-tenants*. This policy guideline provides clarity regarding co-tenants, tenants in common and occupants. Occupants are defined as the following:

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless

all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

The *Residential Tenancy Policy Guideline 19 – Assignment and Sublet* defines assignment as the following:

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.

In accordance with the above definitions, I find that the situation described by both the Landlord and Tenant is neither a sublet nor an assignment. Instead, I determine that the Tenant remains the tenant under the original tenancy agreement and that the other people residing in the rental unit are occupants/roommates.

As such, I find that the causes to end the tenancy listed on the One Month Notice are not valid and therefore the One Month Notice dated April 13, 2018 is cancelled and of no force or effect. The Tenancy will continue until ended in accordance with the *Act*.

As for the Tenant's claims for a reduction in rent, I do not find that there was sufficient evidence to show that a loss occurred due to the issuance of the two One Month Notices that would require a reduction in rent. Section 65(1) of the *Act* states that a reduction in the value of a tenancy agreement can be compensated for through a reduction in rent, but I do not find there is sufficient evidence to show a tangible loss in the enjoyment of the rental unit that could be compensated through monetary means. As such, I dismiss the Tenant's application for a reduction in rent without leave to reapply.

As for the Tenant's claim for an Order for the Landlord to comply with the *Act* or tenancy agreement, although I have determined that the Landlord issued a One Month Notice without sufficient cause, I do not find that this was done to intentionally breach the *Act*. Therefore, an Order will not be issued, but I caution the Landlord in the future to have sufficient proof of a breach of a material term prior to issuing a notice for this reason and to understand the difference between occupants, sublease tenants and assignment of a tenancy. As such, I dismiss the Tenant's application for an Order for the Landlord to comply without leave to reapply.

As the Tenant was successful in their application, I find that she is entitled to the recovery of the filing fee paid for this application in the amount of \$100.00.

Conclusion

The Tenant's application for the Landlord to comply with the *Act* or tenancy agreement, as well as the Tenant's application for a reduction in rent is dismissed without leave to reapply.

The One Month Notice dated April 13, 2018 is **cancelled and of no force or effect**. This tenancy continues until ended in accordance with the *Residential Tenancy Act*.

The Tenant is entitled to the recovery of the **\$100.00** filing fee paid for this application and may **deduct** this amount one time from a future rent payment in full satisfaction of the amount owed from the Landlord.

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: May 23, 2018

Residential Tenancy Branch