



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

The tenant applies to cancel a one month Notice to End Tenancy received March 19, 2018. The Notice was given alleging the tenant had been repeatedly late paying rent and that he had wrongfully assigned or sublet the rental unit. Either reason, if established, is a lawful ground upon which a landlord may end a tenancy under s. 47 of the *Residential Tenancy Act* (the “Act”).

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

Has the tenant been repeatedly late paying his rent? Has he assigned or sublet the rental unit without the landlord’s permission in breach of the law or the tenancy agreement?

Background and Evidence

The rental unit is a two bedroom “plus den” condominium apartment. The tenancy started in May 2017 for a fixed term to April 30, 2018 and then month to month unless a different agreement was made. The monthly rent is currently \$3500.00. The landlord holds a \$1750.00 security deposit.

There is a written tenancy agreement but neither party filed a copy of it.

The tenant travels a great deal as part of his employment. He may be residing somewhere else as it has been reported by a concierge that he is never seen. Though he told the landlord that he and one child would be moving into the rental unit, he has taken on the care of his aging father and he is living in the rental unit. A room has been reserved for the use of employees of a rotating, live-in, care service. As well, the tenant's brother Mr. G.P. stays at the rental unit sometimes to watch over their father.

The rent is paid by post dated cheques. The landlord testifies that even the first cheque, for May 2017 rent, was dishonoured and returned marked "NSF." Since then the rent cheque for June was dishonoured as were the cheques for September, October, November, December and then March 2018. The tenant paid each time, but only after a cheque was dishonoured, causing that rent to be late.

The landlord issued at least two ten day Notices to End the Tenancy for unpaid rent. Each Notice was automatically cancelled by the tenant paying the rent within five days or making an arrangement to pay.

The landlord's agent Mr. K. argues that the tenant has wrongfully assigned or sublet. He says the tenancy agreement contains an addendum that states no person over 18, other than as listed in the agreement, may occupy the rental unit and that no more than two people per bedroom may occupy the unit.

In response the tenant describes the bank account issues he has confronted as the result of divorce proceedings. He says the landlord told him it was acceptable for a family member to stay in the rental unit.

Analysis

Section 47(1)(b) of the *Act* permits a landlord to end a tenancy on one month's notice when a tenant is repeatedly late paying rent.

Residential Tenancy Policy Guideline 38, "Repeated Late Payment of Rent" clarifies that "repeatedly late" means late three or more times.

In this case the tenant has clearly been late paying rent seven times in the first year of the tenancy. Section 47 is strict in its wording and leave room for consideration of a tenant's circumstances.

I find that the tenant has been repeatedly late paying rent and that the one month Notice to End Tenancy is a valid Notice.

Given this conclusion I need not consider the matters of assignment or subletting.

This tenancy ended on April 30, 2018 as a result of the Notice

Conclusion

The tenant's application is dismissed.

Pursuant to s.55 of the *Act*, the landlord is entitled to an order of possession. It appears that the landlord has accepted occupation rent for the month of May 2018 and so the order will be effective May 31, 2018.

Needless to say, the parties may reach an agreement between them for this tenancy to continue on terms agreeable to them.

This decision was rendered orally at hearing and 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 07, 2018

Residential Tenancy Branch