



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, FF

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the 10 day Notice to End Tenancy dated May 2, 2018

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was served on the Tenant on May 2, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was served on the landlord by mailing, by registered mail to where the landlord resides on May 7, 2018. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issue to be decided is whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated May 2, 2018?

Background and Evidence:

On March 6 2018 the landlord and tenant entered into a 5 year for the basement, main floor and Top floor of the rental property. The lease agreement provides that the lease would commence on September 1, 2018 and end on August 30, 2023. The tenant intended to covert the rental property into a day care center.

Paragraph 1.2 of this lease agreement provides that the top floor of the demised premise is subject to a previous lease agreement the term of which expires on October 31, 2018. As a result the top floor shall be excluded from the lease until such time as the tenant takes possession of the Top Floor.

The tenant and JM (the tenant on the Top Floor) had discussions about the Tenant buying back the remainder of her lease. The tenant testified he was prepared to pay her \$2000 if she would vacate at the end of June thereby giving him the right to take possession on July 1, 2018.

At the end of April the tenant received an e-mail from JM stating she had found another place and that she would be leaving on May 1, 2018.

The tenant testified this is of no help to him. He will not get his building permit to renovate the basement and the main floor until the first week of July. He was prepared to move into the Top Floor in July so that he could commence work of renovating the bottom two floors. However, he has no use for the Top Floor until that time. He is prepared to start paying rent for the "Top Floor" commencing July 1, 2018 after he gains possession.

JM provided the landlord with a signed statement that she and the tenant came to an agreement that the tenant would pay her two months rent if she left before May 1, 2018. In addition he agreed to take over her lease including paying the rent for the remaining months.

The tenant specifically denies the evidence of JM that he would take over the lease on May 1, 2018. He testified he was prepared to take over the lease on July 1, 2018 when he had the right to start work on the renovations for the bottom two floors. The tenant acknowledged he paid JM \$2000 after she vacated. He testified he felt obligated as he had agreed to pay her that sum had she vacated on July 1, 2018. He has not moved into or used the "Top Floor."

Analysis:

After carefully considering all of the evidence I determined the landlord failed to establish sufficient cause to end the tenancy pursuant to the 10 day Notice to End Tenancy dated May 2, 2018 for the following reasons:

- The landlord failed to prove that the tenant agreed to take over JM lease as of May 1, 2018.
- The lease documents signed by both parties on March 6, 2018 provide that the "Top Floor" is to be excluded until the lease with JM had concluded (October 31, 2018).

- There is no tenancy agreement between the landlord and the Tenant for the “Top Floor” for the period of May and June. There are no written documents indicating the JM has assigned her lease to the landlord and/or the landlord has accepted the assignment.
- The written statement of JM is insufficient to prove the Tenant agreed to take over her lease as of May 1, 2018. The Tenant denies such an agreement. The documents produced by the parties fail to prove the Tenant agreed to be bound as of May 1, 2018.

Determination and Orders:

As a result I determined the Notice to End Tenancy dated May 2, 2018 is of no force and effect as a tenancy did not exist between the Tenant and the landlord for the use of the Top Floor at that time.

The relationship between the parties is governed by the lease agreement dated March 6, 2018 and subject to any amendments or additional agreements the parties may wish to make in the future.

This decision is final and binding on the parties.

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: June 27, 2018

Residential Tenancy Branch