



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid for its stated purpose?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy, under written agreement, started in July 2014. Current rent of \$1,125.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit. On June 26, 2018 the Landlord gave the Tenant a one month notice to end tenancy for cause (the “Notice”). The stated reason on the Notice is that the Tenant has assigned or sublet the rental unit without the Landlord’s written consent.

The Landlord confirms that there is no evidence of an assignment of the unit. The Landlord states that the Tenant has sublet the unit by renting out a room in the unit. The Landlord states that this room rental was discovered based on the information from another tenant and by looking at the Tenant's rental advertisement on an online site. The Landlord states that from the reviews on this site the Landlord presumes that the Tenant was present while the 3rd parties were occupying the room. The Landlord states that they have no evidence otherwise. The Tenant states that the room was occupied by the renters with the Tenant being present at all times. The Landlord states that they wish to broaden the reason for ending the tenancy on the basis that the Tenant was using the unit for a purpose other than the purpose allowed under the rental agreement. The Landlord could not refer to the section under the Act that provides for an ending of a tenancy on this basis.

Analysis

Section 47(1)(i) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia, the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34. A sublet occurs where a tenant moves out of the unit and a 3rd party pays rent to that tenant to occupy the entire unit for a period of time after which the tenant moves back in. A sublet does not exist where a tenant rents out a room or space within the rental unit to a third party while the tenant remains resident in the rental unit and maintains the tenancy agreement with the landlord. Policy Guideline #19 provides that the third party in these circumstances would be considered an occupant or roommate.

The Notice contains only the one stated reason: assignment or sublet without consent. There is no provision under the Act to end a tenancy for the specific reason that a unit is being used for a different purpose. As there is no evidence that the Tenant had a 3rd party move into and occupy the unit while the Tenant moved out of the unit I find on a balance of probabilities that the Landlord has not substantiated that the Tenant sublet the unit. As the stated reason on the Notice has not been substantiated I find that the

Notice is not valid and that the Tenant is entitled to its cancellation. The tenancy continues.

As the Tenant has been successful I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of the claim.

Conclusion

The Notice is cancelled and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 21, 2018

Residential Tenancy Branch