



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, FF

Introduction

The tenants apply to cancel a one month Notice to End Tenancy for cause. The Notice alleges that the tenants have assigned or sublet the rental unit without the landlords' written consent. They also seek an order altering their access or to permit them to change the locks.

The listed parties attended the hearing, the landlords by their advocate, 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

Have the tenants assigned or sublet the rental unit? Are there grounds for altering the tenant's method of access to the rental unit?

Background and Evidence

The rental unit is a four bedroom house. There is no written tenancy agreement. The parties agree the tenancy started in August or September 2015. Currently the monthly rent is \$1200.00. The landlords hold a \$1200.00 security deposit and no pet damage deposit.

The landlords live about 120 feet away in another house. The homes are on a farm.

The landlords' advocate says the tenants were permitted to operate a daycare from the home. The tenants agree but say they never have.

The advocate says that it was term of the tenancy agreement that there would be only two occupants in the home and that only two vehicles were permitted in the parking area. The advocate says that any more than two vehicles interrupts the landlords' farming operation and particularly the turning around of farm machinery.

He says that after the tenancy started another vehicle showed up. Once, a lady came to the landlords' front door and indicated she was moving into the tenants' rental unit and had been told by the tenants to come over to get approval for her pet dog.

He says that as of mid-May, another vehicle is there "full time" and a man told one of the landlords that he is staying there.

The tenant Ms. S. testifies that the landlord Mr. R. told her it was okay to rent out rooms and that is what she has been doing. She and Mr. S. have had roommates, one at a time, for two years.

She says there is room for the farm equipment and that Mr. R. had indicted a roommate could park in a particular spot.

She says she has to enter the rental unit through the garage.

Mr. S. confirmed the tenants had verbal permission for roommates.

Analysis

Section 47(1)(i) of the *Residential Tenancy Act* (the "*Act*") permits a landlord to end a tenancy on one month's notice where 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 [*assignment and subletting*];

Residential Policy Guideline 19, "Assignment and Subletting" indicates that "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." There has been no such assignment here.

The Guideline indicates,

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. 'Sublet' has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the Act, this is not considered to be a sublet. If the original tenant transfers their rights to a subtenant under a sublease agreement and vacates the rental unit, a landlord/tenant relationship is created and the provisions of the Act apply to the parties. If there is no landlord/tenant relationship, the Act does not apply. Roommates and landlords may wish to enter into a separate tenancy agreement to establish a landlord/tenant relationship between them or to add the roommate to the existing tenancy agreement in order to provide protection to all parties under the legislation.

The evidence presented in this matter satisfies me that the tenants are permitting roommates to occupy rooms in the rental unit and they are not subletting any portion of the rental unit.

Regarding the allegation that the tenancy agreement restricted the number of occupants, the landlords have put themselves at a significant disadvantage by not preparing and obtaining a written tenancy agreement, as they are statutorily required to do. In the absence of a written term restricting the number of occupants, I find on this evidence that there is no restriction but for that set out in s. 47, where an "unreasonable number of occupants" can justify the ending of a tenancy. Considering that this is a four bedroom home, the landlords have not shown there to be an unreasonable number of occupants.

Regarding the tenants' locks and access claim, I dismiss it. The method of entry has been the same as was originally presented to the tenants at the start of the tenancy. They accepted that situation and are not entitled to more.

Conclusion

The one month Notice to End Tenancy dated July 29, 2018 is cancelled.

The tenants' claim for altering access or locks is dismissed.

The tenants are entitled to recover the \$100.00 filing fee paid for this application. I authorize them to reduce their next rent due by \$100.00, in full satisfaction of the fee.

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: September 28, 2018

Residential Tenancy Branch