



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47

The tenant and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, the landlord confirmed that he had received the tenant's hearing package and subsequent evidence package. As the landlord did not raise any issues regarding service of the hearing or evidence package, I find that the landlord was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Service of Landlord's Evidence

The landlord provided witness testimony that the tenant refused personal service of the landlord's evidence package on September 16, 2018. The witness testified that he handed the documents to the tenant and after explaining to the tenant what the documents were, the tenant threw the documents on the ground and shut the unit door. The witness testified that he pushed the documents under the tenant's door; however the tenant just pushed the documents back.

The tenant confirmed he refused personal service of the landlord's evidence package on September 16, 2018. It is the tenant's position that the landlord's evidence package was late.

Section 88 of the *Act* establishes that a landlord may personally serve a tenant documents and *Residential Tenancy Policy Guideline* ("*Policy Guideline*") #12 *Service Provisions* clarifies that the landlord must physically hand a copy of the documents to the tenant. In the event the tenant declines to accept the documents, it may be left near the tenant provided the tenant is informed of the nature of the documents.

I find that the landlord's witness attempted to personally serve the documents in accordance with section 88 of the *Act*, and the tenant refused service. I find the landlord's witness attempted to leave the documents near the tenant and appropriately informed the tenant the nature of the documents. For these reasons I find pursuant to section 71(2)(b) of the *Act*, that the documents were sufficiently served on September 16, 2018.

Rule 3.7 of the *Rules of Procedure* (the "*Rules*") establish that the respondent's evidence must be received by the applicant and Residential Tenancy Branch not less than 7 days before the hearing. In this case, the documents were deemed served on September 16, 2018 and the hearing was held September 24, 2018 therefore the documents were received within the time allowable under the *Rules*.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on March 1, 2017 on a fixed term until February 28, 2018, at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,850.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$925.00 at the start of the tenancy.

The tenant acknowledged receipt of the 1 Month Notice dated August 20, 2018 by way of posting. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant
- tenant has assigned or sublet the rental unit/site without landlord's written consent

Landlord

The landlord testified that the 1 Month Notice was issued on the basis that the tenant was subletting the rental unit through the home stay website AirBnB. It is the landlord's position that this action is in contravention of the signed tenancy agreement and city by-laws. The landlord submits that even if it were found that the tenant were not subletting through Airbnb, the tenant has hosted "guests" in excess of 30 days which constitutes a short term rental. The landlord testified that the tenant is not permitted to operate any short term rentals without the approval of the landlord and such activity would be considered a breach of a material term of the tenancy agreement. The landlord testified that the tenant's actions have put the landlord's property at significant risk because in the absence of screening these short term occupants, it remains unknown what safety risks these occupants pose to the other tenants of the building. In an effort to support his position, the landlord has provided a copy of the Airbnb listing, photographs, emails and text messages.

Tenant

The tenant testified that he did not sublet the rental unit and remains the sole occupant. The tenant confirmed he had guests stay with him but testified that he has not allowed guests to stay in his absence. The tenant has provided witness statements from his guests. The tenant explained that previous to him, his friend rented the unit and operated an Airbnb business out of the unit. His friend's tenancy ended as a result. The tenant acknowledged that the Airbnb listing for his unit remains, however it remains in the name of his friend and therefore he cannot remove the listing. In an effort to support his position, the tenant provided a copy of a letter from Airbnb. The tenant contends that this is evidence enough to prove he has not used Airbnb for his rental unit.

Analysis

The onus is on the landlord to prove the reasons listed on the 1 Month Notice took place by the tenant. The landlord provided evidence in the form of oral testimony and written documents.

The landlord contends that the act of subletting through Airbnb or providing short term rentals outside of Airbnb puts the property at risk. Therefore the landlord must convince me on a balance of probabilities that the tenant is subletting through Airbnb or providing short term rentals. As evidenced by the Airbnb listing, the listing is not in the tenant's name. The listing does not indicate when it was last rented and the letter written by

Airbnb is inconclusive. The landlord has provided insufficient evidence to establish that the “guests” the tenant had stay with him were anything other than guests. Further, *Policy Guideline #19 Assignment and Sublet*, establishes that a rental unit rented via AirBnB or other vacation/rental listing services does not constitute a true sublet, unless the tenant has moved out of the rental unit. At no time, did the landlord argue that the tenant had moved out of the unit.

The evidence, oral testimony of the parties and applicable guideline have convinced me on the balance of probabilities that the tenant was not subletting through Airbnb or providing short term rentals. Overall, I find the landlord has provided insufficient evidence to establish that the tenant sublet as defined under the *Act* and in turn, that any person permitted on the property by the tenant has put the landlord’s property at risk.

Based on the above, I find that the landlord has failed to substantiate his position that the tenant engaged in illegal activity that could warrant the end of this tenancy.

In regards to the breach brought forward by the landlord, I note that the landlord did not indicate on the 1 Month Notice that the tenancy was ending as a result of a breach, therefore the landlord cannot rely on this ground.

In summary, I find the landlord has failed to satisfy its burden of proving the reasons behind the 1 Month Notice. Accordingly, the 1 Month Notice is set aside.

Conclusion

The 1 Month Notice is set aside. The tenancy continues until it is ended in accordance with the *Act*.

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 26, 2018

Residential Tenancy Branch