



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SINGLA BROTHERS HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AS 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; and
- authorization to assign or sublet the tenancy agreement pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The named personal landlord BS (the "landlord") primarily spoke on his own behalf and for the corporate landlord. The corporate landlord was also represented by an agent AW.

As both parties were in attendance service of documents was confirmed. The tenant confirmed receipt of the landlord's 1 Month Notice dated October 24, 2018. The landlord confirmed receipt of the tenant's application for dispute resolution dated October 30, 2018 the amendment also dated October 30, 2018 and the tenant's evidence. The landlord testified that they had not submitted any documentary evidence. Based on the testimonies of the parties I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Should the landlord be ordered to allow the tenant to assign or sublet the rental unit?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. Throughout the hearing both parties spoke over one another's testimony, addressed one another directly and attempted to give evidence on issues that are not relevant to the present application. The principal aspects of the tenant's claim and my findings around each are set out below.

The parties agreed on the following facts. This periodic tenancy began in November, 2012. The current monthly rent is \$2,000.00 payable on the first of each month. The rental unit is a detached home with adjoining yard.

The landlord cited the following reasons for the issuance of the 1 Month Notice:

- *Tenant has not done required repairs of damage to the unit/site.*
- *Tenant has assigned or sublet the rental unit/site without landlord's written consent.*

The landlord testified that they have issued multiple written notices to the tenant to attend to the condition of the yard but the tenant has failed to take action. The landlord said that they have received multiple complaints from the municipality and neighbors. The landlord said that the tenant has left the yard unattended with uninsured vehicles left on the property. The landlord did not support their testimony with any documentary evidence.

The landlord initially testified that the tenant vacated the rental unit and had allowed other occupants to take over the tenancy. The landlord attributed the issues with upkeep and necessary repairs to these occupants. The landlord later corrected their testimony and said that the tenant has resided in the rental unit throughout the tenancy. The tenant confirmed that they have resided in the rental unit at all relevant times. The tenant said that they have had roommates sharing the rental unit at some points but they have never vacated the rental unit nor do they have any intention of so doing.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to

dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that:

Tenant has not done required repairs of damage to the unit/site.

Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The parties testified that the tenant has resided in the rental suite at all relevant times. Both parties agree that the tenant has had roommates during the tenancy.

An assignment is defined in Residential Tenancy Policy Guideline 19 as the act of permanently transferring a tenant's rights under a tenancy agreement to a third party who becomes the new tenant.

Guideline 19 provides that where the tenant remains in the rental unit and rents out space within to others, this is not considered to be a sublet. A sublet, under the Act, refers to situations where the original tenant moves out of the rental suite granting exclusive occupancy to a subtenant.

The Guideline further provides:

Unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the *Residential Tenancy Act*.

Neither party gave evidence that the tenant was acting as agent on behalf of the landlord.

I find, based on the evidence of the parties that there has been no assignment or sublease and there is no cause for the tenancy to end for this reason.

Furthermore, while the tenant applied for authorization to assign or sublet they testified that they have no intention of vacating the rental unit and are in actuality, seeking to

have roommates for the rental unit. As outlined above obtaining additional occupants or roommates is not an assignment or a sublet. Therefore, I find that the tenant has not sought to assign or sublease the tenancy and this portion of the tenant's application does not apply. Accordingly, I dismiss this portion of the tenant's application.

I find there is insufficient evidence that the tenant has not performed required repairs to damage at the rental unit. The landlord provided some testimony about the condition of the rental unit and that they have made written requests to the tenant to perform cleaning and repairs. The landlord did not provide documentary evidence in support of their testimony. The tenant disputed the landlord's description of the condition of the suite. I find that the landlord's testimony without supporting documentation or witnesses to not meet their evidentiary burden.

I find that the landlord has not provided sufficient evidence to show on a balance of probabilities that there is reason for this tenancy to end. Consequently, I allow the tenant's application to cancel the 1 Month Notice.

Conclusion

The 1 Month Notice of October 24, 2018 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The balance of the tenant's application is dismissed with leave to reapply.

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: December 6, 2018

Residential Tenancy Branch