



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC DRI OLC**

Introduction

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

- An order to cancel a One Month Notice to End Tenancy for Cause pursuant to sections 47 and 55;
- An order to dispute a rent increase pursuant to section 41; and
- An order for the landlord to comply with the Act, Regulations and/or tenancy agreement pursuant to section 62.

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 tenant was assisted by an advocate, GR ("tenant"). As both parties were in attendance, service of documents was confirmed. The tenant confirmed receipt of the landlord's One Month Notice to End Tenancy for Cause ("Notice") and the landlord confirmed receipt of the tenant's application for dispute resolution and evidence. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue

Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure ("Rules") allow an arbitrator to consider whether issues are related and if they would be heard at the same time. I determined the issue of whether to cancel the landlord's one month notice to end tenancy for cause was unrelated to the tenant's other issues and dismissed them with leave to reapply at the commencement of the hearing.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

A copy of the tenancy agreement was entered as evidence by the tenant. This month to month tenancy began on April 1, 2016 with rent set at \$850.00 per month, payable on the first day of each month. A security deposit and pet deposit of \$425.00 each was collected and is being held by the landlord. The tenancy agreement indicates on page 6 that there is an addendum, however neither party provided a copy of it.

The landlord provided the following testimony. The rental unit is the lower unit in a house with an upper and lower unit. The utilities are shared as 60% by the tenants living in the upper unit and 40% by the lower tenant in this dispute. Approximately 3 months ago, the people in the upper unit advised the landlord that the tenant has additional people living with her, using a greater share of the utilities. Though he acknowledges the tenant remains living in the unit, additional tenants are not authorized by the landlord. On March 1, 2019, the landlord personally served the tenant with the Notice to End Tenancy, which the tenant acknowledges. The reason for ending the tenancy is: *Tenant has assigned or sublet the rental unit/site without the landlord's consent.*

The tenant provided the following testimony. The tenant has never assigned her tenancy or sublet the rental unit. She has lived in the unit since the commencement of the tenancy agreement and continues to do so. In her application, the tenant acknowledges her sister-in-law moved into the spare room of the unit to help her out. The tenant denies this is a sublet or assignment situation. She pays the people in the upper unit her utilities based on what they tell her she owes, never seeing a utility bill.

Analysis

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause, the tenant may, within ten days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files the application, 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 the *Tenant has **assigned or sublet** the rental unit/site without the landlord's consent.*

Residential Tenancy Branch Policy Guideline PG-19 [Assignment and Sublet] provides definitions to assignments and sublets.

- Assignment

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.

In this case, the landlord does not dispute that the tenant has remained in rental unit since commencement. She has never moved out, and therefore I find she couldn't have assigned her rights under the tenancy agreement to a third party.

- Sublease

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant.

The evidence presented shows the tenant did not transfer her rights under a tenancy agreement to a subtenant, remaining all the while in the rental unit with another occupant/roommate.

- Occupant/roommate

The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, 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*.

The evidence of both the landlord and the tenant clearly indicate the tenant has obtained a roommate, her sister-in-law.

The tenancy agreement supplied as evidence does not contain a clause restricting the number of occupants or requiring the landlord to consent to additional occupants. The

evidence clearly shows the tenant obtained a roommate, but she did not assign or sublet her rental unit.

Conclusion

The landlord has failed to satisfy me the tenant has breached a term of the tenancy agreement by assigning or subletting the rental unit as stated in the Notice. As a result, I order that the Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligation remaining unchanged until ended in accordance with the Act.

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: May 07, 2019

Residential Tenancy Branch