



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE, ERP, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on March 19, 2019 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated March 12, 2019 (the “Notice”). The Tenant also sought emergency repairs and reimbursement for the filing fee.

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties and answered their questions. The parties provided affirmed testimony.

The Landlord provided his full legal name and this is reflected in the style of cause.

Rule 2.3 of the Rules of Procedure states:

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I told the Tenant at the outset that the request for emergency repairs is not sufficiently related to the dispute of the One Month Notice and therefore I would not consider it. This issue is dismissed with leave to re-apply. This does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence

and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

I note that the Landlord had not submitted a copy of the Notice prior to the hearing. At the hearing, I told the Landlord he had until 4:00 p.m. to submit it or I would cancel it. The Landlord submitted it as requested and I have considered it.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. It is between the Landlord and three tenants including the Tenant, N.R. and C.C. The tenancy started February 01, 2017 and was for a fixed term ending January 31, 2018. It included a vacate clause. Rent is \$2,100.00 due on the first day of each month. The tenants paid a \$1,050.00 security deposit in 2017. The agreement is signed by all parties.

The tenancy agreement includes an addendum which has a term stating that the maximum number of occupants in the rental unit is three adults as per the agreement.

The Application included A.B. and S.M. as tenants.

The Landlord testified as follows. He rented the unit to the three people listed on the tenancy agreement. He and the Tenant spoke about the lease continuing on a month-to-month basis in January of 2018. He only recently found out that N.R. and C.C. vacated the rental unit a year ago. N.R. and C.C. never gave notice that they were vacating. He found out A.B. and S.M. were living at the rental unit March 18, 2019. His position is that A.B. and S.M. are only occupants as he does not know anything about them. The rent payments come from the Tenant alone. He still holds the full security deposit paid in 2017.

The Tenant testified as follows. N.R. and C.C. moved out a year ago or more. The written tenancy agreement submitted is the only tenancy agreement he has with the Landlord. A.B. moved in September of 2017. S.M. moved in October of 2017. None of the original tenants assigned the tenancy agreement or sublet to A.B. or S.M. The original tenants simply allowed A.B. and S.M. to move in when N.R. and C.C. moved out. The Tenant has always resided at the rental unit. A.B. and S.M. pay rent to the Tenant who then pays rent to the Landlord. A.B. and S.M. are his roommates, they do not have tenancy agreements with the Landlord.

The Notice is based on the following grounds:

1. Tenant has allowed an unreasonable number of occupants in the unit; and
2. Tenant has assigned or sublet the rental unit without landlord's written consent.

Under Details of Cause it states:

Breach of a material term of the tenancy agreement as per addendum #4 no smoking addendum #8 maximum number of occupants in the rental unit is 3 adults

There was no issue that the Tenant received the Notice posted to the door of the rental unit March 12, 2019.

In relation to the first ground, the Landlord testified as follows. There are three people on the lease. He did an inspection March 18, 2019. There were no female clothes in the rental unit, so he thought more people were living there or that the original tenants had sublet it. He thought maybe the female tenants had allowed their boyfriends to move in. He thought five or six people were living in the rental unit.

I pointed out to the Landlord that he now knows the female tenants moved out a year ago. He acknowledged that his belief that maybe the female tenants allowed their boyfriends to move in was no longer applicable. He acknowledged that he has no evidence or basis to believe more than three people are living in the rental unit.

The Tenant testified that there have only ever been three people living in the rental unit.

In relation to the second ground, the Landlord testified as follows. He did not know N.R. and C.C. moved out until recently. The original tenants did not have permission to sublet without written consent.

I asked the Landlord what evidence he has that any of the original tenants did sublet to A.B. and S.M. He relied on the fact that A.B. and S.M. live at the rental unit and that N.R. and C.C. no longer do.

The Tenant testified as follows. He lives in the rental unit. He has not entered into any agreement with A.B. and S.M. A.B. and S.M. simply moved in when N.R. and C.C. moved out. There has been no assignment or sublet.

Analysis

Policy Guideline 19 deals with assignment and sublet. It defines assignment as follows:

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.

Policy Guideline 19 defines sublet as follows:

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. This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant.

Policy Guideline 19 goes on to state at page six:

Occupants/roommates

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. 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 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.

[emphasis added]

Policy Guideline 13 deals with co-tenants and states as follows at page one:

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement.

...

Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term. If the landlord and tenant sign a written agreement to end the lease agreement, or if a new tenant moves in and a new tenancy agreement is signed, the first lease agreement is no longer in effect.

...

Occupants

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

There is no issue that there is a tenancy agreement between the Tenant and Landlord in relation to the rental unit. N.R. and C.C. were co-tenants of the Tenant under the tenancy agreement. I do not find it necessary to comment further on the consequences of N.R. and C.C. vacating when they did as this is not the issue before me.

There is no evidence that any of the original tenants assigned their rights under the tenancy agreement to A.B. or S.M. or sublet the rental unit to A.B. or S.M. The Tenant denied that any assignment or sublet has occurred with A.B. or S.M. He testified that A.B. and S.M. were simply allowed to move into the rental unit when N.R. and C.C. vacated. The Tenant testified that he has always lived at the rental unit and the Landlord did not dispute this. Given this, I do not find there has been an assignment or sublet. I find that A.B. and S.M. are roommates of the Tenant and occupants of the rental unit. Given this, I have removed A.B. and S.M. from the style of cause as they are not tenants and do not have any standing in this matter.

There is no issue that the Tenant received the Notice on March 12, 2019. He filed the Application March 19, 2019, within the time limit set out in section 47(4) of the *Act*.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I am not satisfied the Tenant has allowed an unreasonable number of occupants in the rental unit. The Tenant testified that there are only three people living in the rental unit. The tenancy agreement allows for up to three occupants in term eight of the addendum, therefore, three occupants cannot be an unreasonable number. The Landlord has submitted no evidence that there are more than three occupants in the rental unit. The Landlord seems to have issued the Notice based on his assumptions and beliefs about what might be happening rather than on any information or evidence that there were more than three people living in the rental unit. The Landlord has failed to show that there are more than three people living in the rental unit and, as stated, this is not an unreasonable number given the tenancy agreement allows for it.

Nor am I satisfied that any assignment or sublet has occurred. The Tenant testified that no assignment or sublet has occurred. The Landlord did not provide any evidence that an assignment or sublet has occurred. The Tenant testified that he has always resided at the rental unit. The Landlord did not dispute this. This shows that an assignment or sublet, as those terms are used in the *Act*, has not occurred. The Landlord simply relied

on the fact that A.B. and S.M. are living at the rental unit to show there has been an assignment or sublet. This is not sufficient. I have found A.B. and S.M. to be roommates of the Tenant and do not find that the evidence supports an assignment or sublet. The Landlord has failed to prove that an assignment or sublet has occurred.

I have not considered any further grounds for the Notice as the Landlord only indicated the two grounds noted above. Specifically, I have not considered the smoking issue as it is not relevant to the grounds noted on the Notice.

The Landlord has failed to prove the grounds for the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenant was successful, I award him reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from one future rent payment.

Conclusion

The Landlord has failed to prove the grounds for the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

I award the Tenant reimbursement for the filing fee. The Tenant can deduct \$100.00 from one future rent payment.

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: May 14, 2019

Residential Tenancy Branch