



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the applicant's application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the respondent's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The respondent acknowledged receipt of the applicant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service.

Issue(s) to be Decided

Does the *Act* apply to the relationship between the applicant and the respondent?

If so, is the applicant entitled to an order for the cancellation of the respondent's One Month Notice pursuant to section 47?

If not, is the respondent entitled to an order of possession pursuant to section 55?

Background and Evidence

The respondent testified that he has a tenancy agreement for the possession of a rental unit. The respondent testified that he continues to reside in the property and he has rented out bedrooms to six other individuals, including the applicant. The respondent testified that the applicant has exclusive use of a bedroom and he shares the kitchen, bathrooms and common areas with the respondent and other occupants. The respondent claimed that he has sublet the rental unit to the other occupants and the respondent is a sublet landlord.

The respondent testified that the residents agreed to rules of conduct including sharing the cleaning tasks and the observance of quiet hours. The respondent testified that, although the applicant did not agree to these rules, it was still expected that the applicant would comply with them.

The respondent testified that the applicant did not comply with the house rules. The respondent testified that the applicant was loud at night and he left messes. The respondent also testified that other residents complained about the applicant as well.

The respondent issued the One Month Notice on March 14, 2019. The applicant denies the respondent's allegations.

Analysis

Pursuant to section 47 of the *Act*, a landlord may end a tenancy by giving notice to end the tenancy. The *Act* defines a "landlord" as the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this *Act*, the tenancy agreement or a service agreement;
 - (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
 - (c) a person, **other than a tenant occupying the rental unit**, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this *Act* in relation to the rental unit;
 - (d) a former landlord, when the context requires this;
- [emphasis added]**

The respondent has asserted that he is a sublet landlord. Sublets are explained in *Residential Tenancy Policy Guideline No. 19* which defines sublets as follows:

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. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement. [emphasis added]

However, in this matter, the respondent has not sublet rental unit for a period of time shorter than his tenancy. Further, the respondent has not vacated the rental unit with an agreement to return to the rental unit later. Rather, the respondent has remained in possession of the rental unit and rented rooms within the rental unit to others. This is not a sublet relationship within the meaning of the *Act*. *Residential Tenancy Policy Guideline No. 19* also states:

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.

...

Occupants should be aware that the director's authority is limited to the relationship between the original tenant and their landlord. [**emphasis** added]

In this matter, I find that the respondent is not a landlord within the meaning of the *Act* because the respondent has remained in possession of the rental unit as a tenant. As such, the respondent does not have a landlord/tenant relationship with the applicant and the *Act* does not apply to the relationship between the applicant and the respondent. Accordingly, this application is dismissed without leave to reapply.

Conclusion

I find that the *Act* does not apply to the relationship between the applicant and the respondent. This application is dismissed without 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: May 15, 2019

Residential Tenancy Branch