



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT OLC

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Tenant, M.R. and landlord, D.F. attended the hearing. They both had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

The One Month Notice was dated April 10, 2019. The landlord testified that the One Month Notice was left in the tenant's mailbox on April 10, 2019. The tenant testified that she found the notice on April 16, 2019. Pursuant to section 90 of the Act, a notice left in the tenant's mailbox is deemed to have been served five days after it was deposited in the mailbox. Accordingly, the tenant is deemed to have been served the One Month Notice five days after the landlord deposited the notice in the tenant's mailbox, being April 15, 2019.

Preliminary Issue: Severance of Portion of Tenant's Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that:

“2.3 Related issues

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.”

It is my determination that the priority claim regarding the One Month Notice and the continuation of this tenancy is not sufficiently related to any of the tenant’s other claims to warrant that they be heard together. The parties were given a priority hearing in order to address the question of the validity of the One Month Notice.

The tenants’ other claim is unrelated in that they do not pertain to facts relevant to the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss all the tenants’ claims with leave to reapply except for the cancellation of the One Month Notice and recovery of the filing fee for this application.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the landlord’s One Month Notice pursuant to section 47?

If not, are the landlords entitled to an order of possession pursuant to section 55 of the Act?

Are the tenants entitled to recovery of their filing fee for this application from the landlord pursuant to section 72?

Background and Evidence

The parties agreed that this tenancy started in March 2016 with rent of \$1,950.00. The tenant paid a \$975.00 security deposit and a \$975.00 pet damage deposit. The rent later increased to \$2,000.00 in 2017.

Neither party submitted a copy of the tenancy agreement as evidence. However, the landlord testified that the tenancy agreement did not prohibit subletting or limit the number of occupants in the rental unit.

The landlord testified that the tenant has sublet the rental unit to a subtenant without the landlord's permission. The landlord issued the One Month Notice seeking to end the tenancy for the stated reason that the tenant had sublet the rental unit without the landlord's permission.

The landlord also complained that a kitchen fire occurred in the rental unit. The tenant testified that the kitchen fire was inadvertent and there no damage to the rental unit.

The tenant testified that she has not sublet the rental unit. Rather, the tenant has a roommate who has lived in the rental unit with the tenant for approximately one year. The tenant testified that she still resides in the rental unit and she shares the property with her. The tenant testified that they each have their own bedroom and they share the living room and kitchen.

The tenant testified that she believes that the One Month Notice was issued in retaliation to a dispute that arose in February 2019. The tenant testified that the rental unit was in a house which the landlords also lived in. She testified that the landlords informed her that they were moving out of the house and tenants would be living in a rental unit upstairs. The tenant testified that the landlord advised her that she would have to pay additional rent and pay for a portion of the landscaping fees after the new tenants moved in. The tenant testified that she objected to this new arrangement and she believes this One Month Notice was retaliatory.

Analysis

A tenant may dispute a One Month Notice for Unpaid Rent pursuant to section 47(4) of the *Act*. Pursuant to *Rules* 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that notice to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct.

The landlord has claimed that the tenant sublet the rental unit without the landlord's permission. Section 34 of the *Act* states that a tenant must not assign a tenancy agreement or sublet a rental unit without the landlord's written permission.

The *Act* defines a “sublease agreement” as a tenancy agreement wherein the tenant transfers their rights under the tenancy to a subtenant for a period shorter than the term of the tenant’s tenancy agreement.

Residential Tenancy Branch Policy Guideline #19 states 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.

Based on the testimony of the tenant, I find that both the tenant and the new occupant are residing together in the rental unit and this arrangement is not a sublet arrangement. Accordingly, I grant the tenant’s application to cancel the One Month Notice. The One Month Notice is of no force or effect. This tenancy shall continue until it ends pursuant to the *Act*.

Since the tenants have prevailed in this matter, the tenants’ application for reimbursement of the filing fee is granted pursuant to section 72. The tenants may deduct may deduct \$100.00 from **ONE** future rent payment to recover the filing fee.

Conclusion

All of the tenants’ applications, other than the tenants’ application to cancel the landlord’s One Month Notice and the tenants’ request for reimbursement of the filing fee, are dismissed with leave to reapply.

The tenant’s application to cancel the One Month Notice is granted. The One Month Notice is of no force or effect. This tenancy shall continue until it ends pursuant to the *Act*.

The tenants’ application for reimbursement of the filing fee is granted pursuant to section 72. The tenants may deduct may deduct \$100.00 from **ONE** future rent payment to recover the filing fee.

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 06, 2019

Residential Tenancy Branch