



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Entre Nous Femmes Housing
Society and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT, FF

Introduction

This hearing was convened in response to an application for dispute resolution made May 6, 2019 and an amended application for dispute resolution made May 24, 2019 by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order allowing more time to make the application to dispute the notice to end tenancy - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

Tenant JW and Tenant LF confirm that Tenant LF is not a tenant on the tenancy agreement, was named as a tenant on the application for dispute resolution in error and is only acting as a support person only to Tenant JW as indicated on the cover page of this Decision. The Landlord did not dispute this confirmation. Given this confirmation I restrict any orders that may be issued to Tenant JW alone.

Issue(s) to be Decided

Did the Tenant apply to dispute the notice to end tenancy later than allowed?

Is the notice to end tenancy valid for its stated reason?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on February 15, 2016. Rent of \$276.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$440.00 as a security deposit. On April 25, 2019 the Landlord served the Tenant with a one month notice to end tenancy for cause (the "Notice") by posting the Notice on the unit door. The Tenant was away at the time and found the Notice on April 29 or 30, 2019. The stated reason on the Notice is that the Tenant assigned or sublet the unit without the Landlord's written consent.

The Landlord states that other tenants informed the Landlord that the Tenant rented out a room in the unit. The Landlord states that the Tenant also advertised the room rental in the unit for \$600.00 and that the advertisement included the postal code of the unit, maps of the building containing the Tenant's unit and photos of the Tenant's unit. The Landlord states that mail addressed to a person other than the Tenant at the Tenant's mailing address was found on the floor of the mail room. The Landlord states that the person on one piece of mail is a friend of the Tenant on the Tenant's Facebook page. The Landlord has no evidence that the Tenant has moved out of the unit.

The Tenant states that it has not moved out of the unit, has not rented any part of the unit and does not have a roommate.

Analysis

Section 47(4) of the Act provides that a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within 10 days after the date the tenant receives the notice. Section 90(c) of the Act provides that a document, if given

or served by attaching a copy of the document to a door or other place, is deemed to be received on the 3rd day after it is attached. Based on the undisputed evidence that the Landlord served the Tenant with the Notice by posting it on the door April 25, 2019, I find that Tenant is deemed to have received the Notice on April 28, 2019. As the Tenant made its application to dispute the Notice on May 6, 2019 I find that the Tenant made its application within the time allowed and does not require an order for additional time. I dismiss the claim for more time.

Section 47(1)(i) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent. Policy guideline #19 sets out that an 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. Under a sublet the original tenant transfers their rights under the tenancy agreement to a subtenant. These rights include the right to occupy the unit. Further a sublet 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. A sublet requires an original tenant to move out of the unit for the duration of the sublet agreement.

There is only evidence that the Tenant was seeking a person to occupy a room in the unit. Even if the Tenant did seek another occupant for one of the bedrooms of the unit, there is no evidence that the Tenant either intended to or did move out of the unit after obtaining a person to occupy the room. As a result, I find that the Landlord has not substantiated that the Tenant purported to assign or sublet the unit. The Notice is therefore not valid for the stated reasons and the Tenant is entitled to its cancellation. The tenancy continues.

As the Tenant has been successful with its application I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of the claim.

Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: June 20, 2019

Residential Tenancy Branch