



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, RP

Introduction

This hearing dealt with a tenant's application to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Property* dated May 1, 2019; for orders for compliance, and for repair orders. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The tenant withdrew her request for orders for compliance and repair orders as those issues have been resolved.

Issue(s) to be Decided

Should the *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") be upheld or cancelled?

Background and Evidence

The landlord in this case is a tenant who rents the main living unit and a separate two bedroom basement apartment located at the property ("herein referred to as the rental unit") from the owner of the property. The landlord testified that he has the owner's permission to sublet the rental unit. The landlord sublet the rental unit to the tenant on a month to month (periodic) basis starting on May 1, 2014. The tenant did not pay a security deposit. The tenant currently pays rent of \$1,250.00 to the landlord on the first day of every month.

The tenant stated that the parties have a written tenancy agreement. The landlord could not recall whether there was a written tenancy agreement. The tenant stated that she thought she had provided a copy of their tenancy agreement with her evidence. The

landlord stated he did not receive a copy of the tenancy agreement with the tenant's evidence. I noted that a copy of a tenancy agreement was not uploaded to the Residential Tenancy Branch service portal either. The tenant was agreeable to providing a copy of the tenancy agreement to the landlord within two days. I ordered her to do so.

On May 1, 2019 the landlord issued the subject 2 Month Notice. The stated reason for ending the tenancy is as follows:

- *The rental unit will be occupied by the landlord or landlord's close family member (parent, spouse or child, or the parent or child of that individual's spouse).*

The landlord left the 2 Month Notice in the place where he ordinarily leaves mail for the tenant. The tenant received the 2 Month Notice and filed to dispute it within the time limit for doing so.

The landlord testified that he seeks to end the tenancy so that the rental unit may be used by his son and his parents.

The tenant submitted that the landlord is not the owner of the property and that he cannot end the tenancy for the reason stated on the 2 Month Notice.

Analysis

In this case, the parties appeared to be of the same mind that the landlord sublet the rental unit to the tenant. When a rental unit is sublet, the original tenant remains the tenant of the original landlord, and, upon vacating the rental unit and granting exclusive occupancy to the sub-tenant, the original tenant becomes the "landlord" of the sub-tenant by virtue of paragraph (c) of the definition of "landlord" under section 1 of the Act.

Section 1 of the Act defines landlord as:

"landlord", in relation to a rental unit, includes any of 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;

I accept the unopposed position of the parties that the parties entered into a sublease agreement for the rental unit and I proceed to determine whether the 2 Month Notice issued by the landlord in this case should be upheld or cancelled.

Where a Notice to End tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) stated on the Notice.

The stated reason for ending the tenancy on the 2 Month Notice before me is provided for under section 49(3) of the Act. Section 49 provides for all the ways a landlord may end a tenancy for landlord's use of property. Section 49(3) states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49(1) provides certain definitions that apply to section 49 notices to end tenancy for landlord's use of property including the definition of landlord. Section 49(1) provides:

49 (1) In this section:

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest

A reversionary interest means a right to the future enjoyment of property. In property law, a reversionary interest is a future interest that is retained by the grantor after the conveyance of an estate of a lesser quantum that he has.

An owner of a property has a reversionary interest in a property where the owner has rented the property to a tenant. I am of the view that an original tenant also has a reversionary interest in a property where the tenant has sub-let the property as a sub-let is for a period of time that is shorter than the original tenancy.

The tenant submitted that the landlord was not in a position to end the tenancy because he is not the owner of the property; however, the definition of “landlord” in section 49(1) does not specifically define “landlord” as being limited to an owner and I find that if the lawmakers intended that the Act would have simply used the word “owner” as it does in other places in the Act. In interpreting statutes, meaning must be given to the words actually used. Accordingly, I find the landlord in this case may meet the definition of “Landlord” under section 49 if he has a reversionary interest in the property that exceeds three years. Such an interest may be demonstrated by way of a fixed term tenancy agreement he has with the owner that exceeds three years.

The landlord in this case did not make any submissions to demonstrate that he holds at least a one-half reversionary interest in the property that exceeds three years. Therefore, I find the landlord in this case did not satisfy me that he meets the definition of “landlord” for purposes of issuing a notice to end tenancy under section 49(3) of the Act and I grant the tenant’s request to cancel the 2 Month Notice.

Since the parties were of the position the rental unit has been sub-let to the tenant, I find it important to point out that the original tenant (the landlord in this case) must be able to regain possession of the rental unit before his tenancy ends. Generally, this is specified in the sublease agreement. The situation with month-to-month (periodic) tenancy agreements is not as clear as the Act does not specifically refer to sub-letting periodic tenancies, nor does it specifically exclude them. In the case of a periodic tenancy, there would need to be an agreement that the sublet continues on a month-to-month basis, less one day, in order to preserve the original tenant’s interest in the tenancy.

In this case, I heard the “landlord” has consent to sublet the rental unit; however, he testified that he sublet it on a month to month basis. The sublease agreement was not presented to me and the landlord claims to not have a copy. Accordingly, I order the tenant to provide the landlord with a copy of their sublease agreement within two (2) days so that the parties may determine when the sublease ends.

I also refer the parties to Residential Tenancy Policy Guideline 19: *Assignment and Sublet*. The policy guideline provides information and policy statements with respect to assignment and subletting a property, including the following:

The sub-tenant's contractual rights and obligations are as set out in the sublease agreement. Generally speaking, the sub-tenant does not acquire the full rights provided to tenants under the Act. For example, if the landlord ends the tenancy with the original tenant, the tenancy ends for the sub-tenant as well. The sub-tenant would not be able to dispute the landlord ending the tenancy with the original tenant; it would be up to the original tenant to dispute the notice. Similarly, the original tenant/landlord also does not have all the responsibilities that a landlord has under the Act. For example, while all landlords have a duty to provide and maintain the rental premises, only the original landlord has the right to make repairs. The original tenant does not have the right to make repairs as the landlord to a subtenant. A subtenant may ask the original tenant to make repairs and may apply for a rent reduction if the repairs are not completed within a reasonable time frame. However, the original tenant would be required to request the repairs to be completed by the original landlord and remains responsible to the original landlord for payment of rent as set out in their tenancy agreement.

While the RTA does not specify what the rights and responsibilities of the original tenant and subtenant are, the common law, pursuant to s. 91 of the RTA, may apply. In the event of uncertainty around the rights and responsibilities of parties to a sublease agreement, an arbitrator will consider the individual circumstances and evidence of each case in making a determination.

The sub-tenant typically pays rent to the original tenant; but even if he or she fails to do so, the original tenant's responsibility to pay rent to the landlord is unaffected and the original tenant can be evicted if rent is not paid. Again, it should be noted that there is no contractual relationship between the original landlord and the sub-tenant. In the event of a dispute, the sub-tenant may apply for dispute resolution against the original tenant, but likely not the original landlord, unless it can be shown there has been a tenancy created between the landlord and sub-tenant.

Conclusion

The 2 Month Notice dated May 1, 2019 is cancelled and the sublease continues until such time it ends under the sublease agreement or another way permitted under the Act.

The tenant has been ordered to provide the landlord with a copy of the sublease agreement within two (2) days of today's date.

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: June 13, 2019

Residential Tenancy Branch