



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LNC, OPC, FF

Introduction

In the first application the tenant applies to cancel a one month Notice to End Tenancy dated June 28, 2019. The Notice alleges the tenant has been repeatedly late paying rent and has assigned or sublet the premises without the landlord's consent. Either of these grounds, if proven, are lawful grounds for a landlord to end a tenancy under s. 47 of the *Residential Tenancy Act* (the "Act").

In the second application the landlord seeks an order of possession pursuant to the Notice.

The tenant's eight year old daughter attended the hearing. She is not a tenant. The landlord incorrectly included her as a tenant in the Notice to End Tenancy that he served on the tenant.

Issue(s) to be Decided

Is this Notice an effective Notice to End Tenancy?

Background and Evidence

The rental unit is a two bedroom suite in a house containing a total of four rental units. This unit also has a basement; an open, concrete floored area containing two water heaters and a washer and dryer.

There is a written tenancy agreement. The tenancy started in May 2016. Currently the monthly rent is \$1508.00 due on the 1st of each month. The landlord holds a \$725.00 security deposit.

The landlord claims the tenant was late paying rent a number of times in 2018 and was late February, March, April, May and June in 2019.

He claims the tenant rented out the basement to a man named D. D called him complaining that the tenant had changed the locks on him and that's how he discovered the tenant's assigning or subletting. D. also told him that the tenant had rented out one of the two bedrooms upstairs. D told him each of he and the upstairs bedroom occupant were paying the tenant \$900.00 per month.

The tenant denies being late paying rent in 2018, saying the landlord merely took his time depositing her rent cheques. She says in 2019 she paid by direct bank transfer. She doesn't dispute paying after the first of each month but she says that she and the landlord had a verbal agreement that she could pay rent late. The landlord denies any such agreement.

The tenant admits she has a person living in the second bedroom. Her daughter occupies the other bedroom and she herself sleeps in the area that was formerly the living room and which is not shares with other occupants but for her daughter. She says that D. was a friend she let stay downstairs but who was expelled by her for his drinking. She admits she changed the lock on the back door.

Analysis

Assign or Sublet

The evidence shows that the tenant has permitted others to occupy the rental unit and share facilities with her. There is no evidence that the tenant has assigned her tenancy. In fact, she is still living there. Similarly there is no evidence that she has sublet the rental unit. Again, she is still living there and has not given up her right to exclusive possession of the rental unit.

According to Residential Tenancy Policy Guideline 19, "Assignment and Sublet;"

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.

And

Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant.

Neither had occurred here. The tenant has acquired what is commonly referred to as “roommates” who merely have a license to occupy the rental unit with perhaps a right to exclusively occupy a portion, like a bedroom. The *Act* does not impose a landlord consent requirement in such cases.

This ground for the Notice must fail.

Late Rent

The Notice served on the tenant did not provide “Details of Cause.” That portion of the standard Notice was left blank by the landlord and there was no attached documentation to indicate what months the landlord was claiming that tenant was late paying rent for.

Under s. 52(e) of the *Act*, the landlord’s Notice must be in the “approved form.” This Notice was in the approved form and that form required the landlord to give details of the cause for the Notice. In the case of an allegation that the tenant has been repeatedly late paying rent, those details are, at a minimum, a description of what months the landlord alleges the tenant was late paying rent for.

The ending of a tenancy is a very serious matter. The burden to show that a tenant has given grounds for eviction is on the landlord. While the standard of proof is on a balance of probabilities, clear and cogent evidence must be presented and a landlord will be required to strictly comply with the statutory requirements for giving such a notice to end a tenancy.

In this case I find that the landlord’s failure to complete the Details of Cause portion of the Notice is fatal to the validity of the Notice. It should not require a tenant to make an application challenging the Notice and pay a \$100.00 filing fee to find out the details for a Notice.

Conclusion

The tenant’s application is allowed. The Notice to End Tenancy dated June 28, 2019 is hereby set aside. The landlord’s application is dismissed.

The tenant is entitled to recover the \$100.00 filing fee. I authorize her to reduce her next rent by \$100.00 in full satisfaction of the fee.

At hearing I stated that any late payment of rent up to and including Jun 2019 could no longer be used as grounds for a fresh Notice to End Tenancy. I was mistaken. As the parties had their rights and obligations defined at this hearing in September, I determine that only late payments occurring after this decision may be used as a basis for any future Notice to End Tenancy for repeated late payment of rent.

The tenant has been warned that the rent is due on the first of each month and that any verbal agreement for the landlord to accept rent late is no longer in effect.

The tenant was also warned that though she might not have assigned her tenancy or sublet the rental unit, the *Act* s. 47(1)(c) gives the landlord the right to end a tenancy where there are an unreasonable number of occupants in the rental unit.

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: September 16, 2019

Residential Tenancy Branch