



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, AS, FF

Introduction

Ms. M.H., the widow and personal representative of the late tenant Mr. R.G. applies for an order compelling the landlords to consent to an assignment or subletting of the rental unit. She also seeks to cancel a one month Notice to End Tenancy dated July 16, 2019.

The Notice alleges that the tenant has been repeatedly late paying rent, has put the landlord's property at significant risk and has engaged in illegal activity.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the evidence show lawful grounds for ending this tenancy? Can the application force the landlords to consent to an assignment or subletting?

Background and Evidence

The rental unit is a three bedroom house on a large forested property. Apparently there is a written tenancy agreement though none was filed. The tenancy includes a number

of outbuildings which have been used ancillary to a small farming operation. The tenancy started in May 2009. The monthly rent is \$822.00. There was no security deposit.

The tenant passed away suddenly on June 14, 2019. The applicant is his personal representative, was his partner and is the mother of their child. The rental unit is not her principal residence. She has been paying rent regularly since the tenant's death.

There is a person, Ms. E.T., another tenant of the landlord, who would like to take over and continue the tenancy and the late tenant's farming operation.

The landlord provided "Details of Cause" required in the Notice, by a separate letter. There are four listed reasons.

The first reason given is that the tenant had an illegal cannabis operation that had lost its permit to grow.

The second reason is that the tenant did electrical work without permission.

The third reason is that the cannabis operation threatened the landlord's insurability.

The last reason given is that the tenant has almost always been late paying rent for the last two years "as per evidence presented."

Analysis

Assignment and Subletting

Section 34 of the *Residential Tenancy Act* (the "Act") provides:

- 34** (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.
- (2) If a fixed term tenancy agreement has 6 months or more remaining in the term, the landlord must not unreasonably withhold the consent required under subsection (1).

As this tenancy was a month to month tenancy and not a fixed term tenancy that had 6 months or more remaining in the term, there was no obligation on the landlord to consent.

The application to compel the landlord's consent to an assignment or subletting is dismissed. The application should contact the Residential Tenancy Branch or obtain legal advice about how she may make use of the property.

The Notice to End Tenancy

The Notice raised three grounds for ending this tenancy:

Repeated Late Rent

The ending of a tenancy is a very serious matter and a landlord will be required to present clear and cogent evidence to establish lawful cause on a balance of probabilities. He will be required to strictly follow the procedures and requirements to end the tenancy.

That evidentiary requirement is heightened by the fact that the tenant who might have something to say about the matter, has passed on.

The landlord has failed to list either in the Notice or in the document said to have been attached to it, the months in which it was claimed the tenant was late. Without this information the respondent cannot reasonably determine the validity of such a claim or compile evidence to contradict it.

I dismiss this ground for the Notice.

Illegal Activity (Cannabis Operation)

While the Notice claims that the tenant has engaged in illegal activity it does not indicate what effect it has had or is likely to have. The Notice document requires the landlord to check off whether the illegal activity has or is likely to: a) damage the landlord's property, b) adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant, or c) jeopardize a lawful right or interest of another occupant or the landlord.

The landlord has failed to complete this portion of the Notice and that failure is fatal to this ground for eviction.

In any event, I find that the landlord has not proved the tenant was involved in an illegal marijuana grow operation. It is clear the tenant had a medical authorization to grow cannabis. The law does not require a tenant to obtain a landlord's consent to grow medical cannabis if it is the tenant's ordinary place of residence. The landlord has not shown that the number of plants found at the site exceeded any limit set by law. The death of the tenant did not make the existence of the growing operation illegal.

Putting Landlord's Property at Significant Risk

The tenant has constructed a "greenhouse" building and had brought two shipping containers onto the property in order to grow plants inside them, likely marijuana. In order to operate the buildings the tenant had caused them to be electrified by underground lines from his home, which also received an electrical upgrade.

This work had apparently been done about a year ago. The landlord implies he knew nothing about it, even though he lives nearby and, assumedly, would have seen that the buildings were ventilated. He caused this wiring to be removed by an electrician following the tenant's death.

Whether or not the work was done by the tenant without permission, the landlord has not shown that it was done in such a way as to put the landlord's property at significant risk. It may have been done by a qualified electrician and it may be that that fact resides only with the deceased tenant.

It appears from the emails filed that before his death the tenant was working with the landlord to overcome possible insurance coverage details regarding the growing of medical marijuana. It was not explained what coverage might have been jeopardized or how. It may be that only coverage for the tenant's greenhouse, a removable building, was at risk, which would not be a concern to the landlord.. In any event, the tenant has passed on and any risk has vanished with the plants removed by the police. Having regard to the limited evidence presented on this aspect I decline to conclude the insurance issues raised posed a significant risk to the landlord's property, as required by s. 47(1)(d)(iii) of the *Act*.

Conclusion

The application for an order compelling the landlord to consent to an assignment or subletting of the tenancy is dismissed.

The application to cancel the one month Notice to End Tenancy dated July 16, 2019 is allowed. The Notice is hereby cancelled.

As the applicant has had divided success I allow recovery of \$50.00 of the filing fee and I authorize the applicant to reduce the next rent due by \$50.00 in full satisfaction of the 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: September 29, 2019

Residential Tenancy Branch