



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOFFO DEVELOPMENT (DOW) LTD
BOFFO and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FFT

Introduction

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

- Cancellation of a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord").

As both parties were represented service of documents was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

This tenancy originally began in May, 2016 and the landlord assumed this tenancy in January 2018. The current monthly rent is \$799.00 payable on the first of each month. The rental unit is a suite in a multi-unit building containing 10 total units.

The landlord issued a 1 Month Notice dated July 22, 2019 providing the reasons for this tenancy to end as the tenant has allowed an unreasonable number of occupants in the unit or that the tenant has assigned or sublet the rental unit without landlord's written consent. The landlord submits that there have been complaints from other occupants of the building that a large number of people have been seen coming and going to the rental unit and making reference to a "temple". The landlord submits that the tenant has indicated that someone else is looking after the rental unit and the tenant has not been seen at the rental unit for some time. The landlord also submits that the cheques provided for rent payment are from an account that does not bear the tenant's name. The landlord submitted into evidence a cheque for rent payment bearing another individual's name and letters from other occupants of the rental building.

The tenant disputes that they have assigned or sublet the rental unit or allowed other occupants to reside there. The tenant explained that they travel for work and have friends who attend regularly at the rental unit to maintain it but they are not residing there.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant has allowed an unreasonable number of occupants in the unit or that the tenant has assigned or sublet the rental unit without landlord's written consent.

I find that on a balance of probabilities the landlord has not established a basis for this tenancy to end. The landlord believes that the tenant does not reside in the rental unit and instead has allowed others to reside in the unit or to access it for use as a temple. I

find the landlord's evidence in support of their belief to be circumstantial and weak in establishing their position.

The scant observations of a few neighbors in the building is insufficient to establish that the tenant is not residing in the rental unit. The evidence provided is that there are some guests who attend regularly at the rental unit. There is no indication that these guests are occupants of the rental unit. The evidence provided by the landlord's witness is that these guests attend on a weekly basis and sometimes stay overnight but there is no evidence that they are residing in the rental unit or are occupants.

I find the source of rent payments to be of little help in establishing that the tenant is no longer residing in the rental unit and has assigned or sublet the suite. Payment can be issued by different individuals or different bank accounts for a myriad of reasons and I do not find the issuance of a rent cheque from an account bearing another person's name to be evidence that the rental unit has been assigned or sublet.

Taken in its entirety the landlord has not met their evidentiary burden of establishing that there is cause to end the tenancy. The landlord's evidence is weak, consists mainly of suspicions, conjecture and limited observation. As such, I find that the landlord has not shown that there is a basis for this tenancy to end and I allow the tenant's application to cancel the 1 Month Notice.

As the tenant was successful in their application, the tenant may recover the filing fee from the landlord. As this tenancy is continuing the tenant may make a one-time deduction of \$100.00 from their next scheduled rent payment in satisfaction of this monetary award.

Conclusion

The tenant's application to cancel the 1 Month Notice is granted. This tenancy continues until ended in accordance with the Act.

The tenant may make a one-time deduction of \$100.00 from their next scheduled rent payment.

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: October 3, 2019

Residential Tenancy Branch