Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

On November 25, 2019, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "*Act*"), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Both the Tenants and both the Landlords attended the hearing. All in attendance provided a solemn affirmation.

The Tenants advised that they served each Landlord with the Notice of Hearing package and some evidence by registered mail on November 26, 2019 and the Landlords confirmed that they received these packages. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlords have been served with the Notice of Hearing package and some evidence.

The Tenants stated that they sent the rest of their evidence to the Landlords by registered mail on December 31, 2019. The Landlords advised that they received this evidence on January 6, 2020, that they had read it, and that they were prepared to respond to it. While this evidence was served late and not in compliance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, as the Landlords were prepared to respond to it, I have accepted all of the Tenants' evidence and it will be considered when rendering this decision.

The Landlords stated that they placed their evidence in the Tenants' mailbox on December 30, 2019 and the Tenants confirmed that they received this evidence on. As such, I am satisfied that the Landlords' evidence has been satisfactorily served on the

Tenants in accordance with Rule 3.15 of the Rules of Procedure. This evidence was accepted and will be considered when rendering this decision.

As stated during the hearing, as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlords' One Month Notice to End Tenancy for Cause, and the other claims were dismissed. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 26, 2017 and that rent is currently $1,200.00 per month, due on the first day of each month. A security deposit of $600.00

was also paid. A copy of the tenancy agreement was submitted as documentary evidence.

All parties agreed that the Notice was served to the Tenants by registered mail on November 14, 2019 and the Tenants confirmed that they received the Notice. The reasons the Landlords served the Notice are because the "Tenant has assigned or sublet the rental unit/site without landlord's written consent" and "*Residential Tenancy Act* only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement." The Notice indicated that the effective end date of the tenancy was December 20, 2019.

With respect to the first reason the Landlords served the Notice, Landlord T.J.G. advised that on or around September 30, 2019, the Tenants told them that a brother would move into the rental unit. They had a conversation with the Tenants about this but did not follow up. The Landlords required that a new tenancy agreement be signed with new terms; however, the Tenants did not sign this by November 2019. They stated that the Tenants knew that the Landlords wanted a new tenancy agreement to be signed as far back as January 2019. As well, they stated that the new tenancy agreement would include access to the basement as it was not included as part of the original tenancy. They submitted that the Tenants were only entitled to the upstairs with access to the laundry room, and any other areas in the basement were designated for the Landlords' use. However, there was nothing stipulated in the tenancy agreement indicating this. It is their belief that the Tenants' brother is living in the rental unit contrary to the tenancy agreement, but they acknowledged that there are no terms in the agreement which address this issue. While they were aware that this person moved into the rental unit for some months, they did not take any other action or issue the Tenants with a written warning to have this person vacate.

The Tenants advised that they did not sublet the rental unit to the brother and the Landlords were aware that he would be moving in. They stated that they had access to the whole house, and this was the understanding when the property was rented to them. However, the basement area that the Landlords stored some of their property would be eventually emptied by the Landlords so that the Tenants could have full use of the entire rental unit, as agreed upon.

With respect to the second reason on the Notice, Landlord T.W.G. advised that the Tenants had a cat at the start of the tenancy, and the Landlords were ok with this. However, a few years ago they noticed that a dog would be in the rental unit occasionally and they were fine with that, but they soon discovered that the dog was

there permanently. As such, they requested a pet damage deposit from the Tenants, which was never paid. They confirmed that they did not include a no pets clause in the tenancy agreement, nor did they request that a pet damage deposit be paid in the tenancy agreement.

The Tenants advised that Landlord T.J.G. knew about the dog years ago and chose not to do anything about it. They also offered a pet damage deposit, but the Landlords refused to accept this.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

In considering this matter, I have reviewed the Landlords' Notice to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

47 *(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

> *(a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;*
> *(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34* [assignment and subletting]*;*

I find it important to note that Policy Guideline # 19 defines a sublet as:

> When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. This 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. The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant.

Further, this documents states that the following:

> Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act. The use of the word 'sublet' can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement. 'Sublet' has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the Act, this is not considered to be a sublet.

Finally, regarding pet damage deposits, Policy Guideline # 31 states that:

> If a tenancy agreement is silent about pets, then the landlord cannot require a pet damage deposit.

With respect to these reasons on the Notice, the burden is on the Landlords to present persuasive evidence that supports their position for ending the tenancy. Regarding the subletting issue, it is important to note that the Tenants clearly did not sublet the rental unit as they still lived there. The Landlords have mistaken the Tenants renting to the brother as a sublet. In actuality, what the Tenants have done is brought an occupant or roommate into the rental unit. As the Tenants have clearly not sublet the rental unit, the reason that the Landlords have checked off on the Notice that the "Tenant has assigned

or sublet the rental unit/site without landlord's written consent" has not been substantiated. Based on the undisputed evidence before me, I do not find that the Landlords have justified an end to the tenancy for this reason.

While the Landlords appear to take issue with the Tenants moving a person not on the tenancy agreement into the rental unit, it will be up to the Landlords to deal with this matter in accordance with the *Act*. However, it should be noted that the Landlords did not include any terms in their tenancy agreement with respect to extra occupants in the rental unit.

With respect to the reason that the Landlords checked off on the Notice of "security or pet damage deposit was not paid within 30 days as required by the tenancy agreement", the undisputed evidence is that the Landlords did not include a no pets clause into the tenancy agreement. As such, the Landlords cannot require the Tenants to pay a pet damage deposit nor can they attempt to implement a no pets clause without all parties agreeing to a change of terms, in writing, in the tenancy agreement. Based on the undisputed evidence before me, I do not find that the Landlords have justified an end to the tenancy for this reason either.

As the Landlords have mistakenly checked off reasons on the Notice that were not applicable to this situation, I am not satisfied of the validity of the Notice. Ultimately, I find that the Notice is of no force and effect.

I find it important to note that the Landlords testified multiple times that they were "rushed to sign a tenancy agreement in three days" and they signed the first form they found. However, rushing into this situation without understanding their responsibilities and obligations as Landlords is not justification for attempting to contract outside of the *Act* and managing the rental unit in whatever manner they deem appropriate.

As the Tenants were successful in their claims, I find that the Tenants are entitled to recover the $100.00 filing fee paid for this application, and they may withhold this amount from a future month's rent.

As noted above, Rule 2.3 of the Rules of Procedure permits the severing of unrelated claims. As such, I have not made any findings with respect to the issues of whether the whole house was rented to the Tenants, about any alleged rent increases, about any frivolous threats of eviction, about any demands to sign a new tenancy agreement, or about any other issues not related to the Notice. The Tenants are at liberty to apply for any other claims under a new and separate Application.

Conclusion

Based on the above, I hereby Order that the One Month Notice to End Tenancy for Cause of November 14, 2019 to be cancelled and of no force or effect. The tenancy shall continue until ended in accordance with the *Act*.

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: January 17, 2020

Residential Tenancy Branch