



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for an order to cancel a One Month Notice To End Tenancy for Cause pursuant to section 47.

The landlord attended the hearing and was represented by co-landlord, DS ("landlord"). The tenant attended the hearing. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Preliminary Matters

Section 63 of the *Act* allows an Arbitrator to assist the parties settle their dispute and record the settlement in the form of a decision and order if the parties settle their dispute during the dispute resolution proceeding. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms of a settlement. The parties could not reach consensus on the terms of a settlement; therefore, I heard testimony, considered the evidence, and issued a decision to resolve this dispute.

Issue(s) to be Decided

Should the Notice to End Tenancy be upheld or cancelled?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the

parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The tenant has been living in the rental unit for approximately 6 years. The current landlords entered into a month to month tenancy agreement with the existing tenant on July 1, 2016 when they purchased the house. Rent was originally set at \$900.00 per month but is currently \$984.00 per month. A security deposit is currently being held by the landlord.

On January 16, 2020 the landlord personally served the tenant with a One Month Notice To End Tenancy for Cause ("Notice"). The tenant acknowledges receiving it on this date. The effective date noted on the Notice is March 1, 2020 and the reason for ending the tenancy states:

Tenant has assigned or sublet the rental unit/site without the landlord's written consent.

Under details of cause, the landlord wrote:

Tenant on current rental agreement no longer resides in rental unit. [tenant] now has tenant [D] and her boyfriend living at unit without written consent from us, the landlords. Refusal to sign updated rental agreement resulting in eviction.

The landlord gave the following testimony. At first, every time he went to the unit, he noted different people in the house. When the landlord needed the roof repaired, the tenant made a reference to a roommate. To corroborate this, the landlord states the photograph provided into evidence by the tenant, bedroom #3 had a bed in it that is now moved. There was stuff on the walls making it look like someone was living in it. This is the room the landlord believes belongs to the tenant's roommate.

In late October 2019, he was introduced to [D] and the tenant stated to him [D] was living there. The landlord responded to the tenant indicating that if that's the case, he and the tenant have to go over a new rental agreement since [D] is not on it. When a new tenancy agreement was presented to the tenant, the tenant told him she wouldn't sign the new agreement until her roommate got home. This new tenancy agreement was for \$1,300.00 in rent rather than the \$984.00 currently being paid.

In verbal conversations, the tenant told him she pays the rent but [D] pays the hydro. The landlord states there are 3 reasons to believe [D] is a roommate. First, there is a text message that refers to a roommate. Second, he's seen the 3rd bedroom that appears to have been set up with decoration that gives the appearance someone other than the tenant or her kids occupy it (the landlord testified it looks different in the tenant's

photos). Lastly, the tenant has parcels and government documents delivered to the addressees not listed on the tenancy agreement. Photos of delivery slips to parcels delivered and mail addressed to non-residents were provided as evidence by the landlord.

The tenant provided the following testimony. The original co-tenant named on the tenancy agreement moved away in mid-November 2017. She has been renting the unit alone with her children and dog since then. There were times when a friend [Z] would come over to dog-sit and occasionally spend the night when he was performing in wrestling shows in town but that person moved eventually moved away. [Z] liked to stay in that third bedroom, but the current arrangement is for her kids to choose to sleep in the second or third bedroom whichever one they want.

When the tenant lost her job, she went to Central America for 3 weeks, around July 2019. Her boyfriend [D] house-sat and dog-sat during this period. Her boyfriend does not live in the rental unit with her, he lives with his family in town. To corroborate this, the tenant provided a copy of the boyfriend's drivers license that shows a different address from her own. The landlord submits that the date the license was acquired is suspicious because it wasn't obtained around the boyfriend's birth date but the tenant testified it was an oversight and the boyfriend didn't know it had expired until he crossed the border.

Regarding the package delivered to [Z], the tenant testified that after he had moved away, he wanted to send a gift to the tenant and the tenant advised him to address the package to himself so her kids wouldn't suspect a gift. The person who got a government letter she thinks is a previous tenant to her, mail has been coming for this person since before she moved in.

Analysis

I find the tenant was served with the One Month Notice To End Tenancy for Cause on January 16, 2020 and filed to dispute it on within 10 days on January 20, 2020 in accordance with section 47 of the *Act*.

Section 47(1)(i) states a landlord may end a tenancy by giving notice to end the tenancy if 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*].

Assignments and sublets are discussed in Residential Tenancy Policy Guideline 19.

Assignment

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.

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An assignment may take place in various circumstances, such as a tenant leaving town, but still having a period of time left on a fixed-term tenancy agreement. The original tenant may wish to assign the tenancy agreement to a new tenant who takes over the tenancy agreement for the remainder of the term.

In this case, the tenant in this dispute has not assigned her rights under the tenancy agreement. This tenant has remained in a landlord/tenant relationship with the landlord throughout the tenancy. The landlord has not supplied sufficient evidence to show any third party has taken over the tenancy from the existing tenant.

Subletting

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.

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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.

Likewise, the facts do not show a subletting agreement was made by the tenant to a sub-tenant. A sub-tenancy is usually found in fixed term agreements whereby the original tenant resumes the tenancy before the end of the fixed term. A month to month

tenancy agreement was entered into between these parties, making the possibility of a sub-tenancy remote. I find the landlord has provided insufficient evidence to show the tenant sublet the rental unit to a sub-tenant in this case.

Occupants/Roommates

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.

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The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act.

As stated previously, the landlord sought to end the tenancy pursuant to section 47(1)(i) of the *Act* because the tenant purportedly assigned or sublet her tenancy. I find the tenant has done neither. While the landlord has provided testimony that he believes the tenant obtained a roommate; obtaining a roommate was not the reason he's provided for ending the tenancy the Notice he served on the tenant. I make no findings as to whether I find the tenant has obtained a roommate.

I find the landlord has not successfully proven the tenancy should end for the reasons stated on the Notice to End Tenancy. The Notice is cancelled.

Conclusion

The One Month Notice To End Tenancy for Cause is cancelled and of no further force or effect.

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: March 22, 2020

Residential Tenancy Branch