



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

The tenant filed an Application for Dispute Resolution on March 31, 2020 seeking an order to cancel the 'One Month Notice to End Tenancy for Cause' (the "One Month Notice"). The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on May 22, 2020.

The landlord confirmed receipt of the Notice of Dispute Resolution for this matter, served by the tenant via registered mail on April 2, 2020. This includes the evidence prepared by the tenant for this hearing. The landlord did not provide documentary evidence for this hearing.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The tenant and the landlords attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

Preliminary Matter

There was a previous hearing in this matter where the tenant applied to have the landlord comply with the *Act*, regulation or tenancy agreement. The file number of that previous hearing is noted on the coversheet of this decision. The focus of that hearing, and the application filing date, preceded the issuance of the One Month Notice by the landlord on March 25, 2020. The decision of the arbitrator in that matter was issued on May 4, 2020, preceding this hearing on May 22, 2020.

In this present matter, I am not bound by the previous decision of another arbitrator; however, I do note the tenant provided a copy of that previous decision for this hearing.

While the prior decision may inform my decision in this present matter, it does not exclusively carry my independent judgment here.

The landlord confirmed they received the tenant's prepared evidence for this present hearing. Because the prior arbitration decision concerns both parties here directly, I find it was provided to each party in due course after it was issued on May 4, 2020. Thus, I am satisfied both parties have reviewed that decision, and find it was sufficiently served to each. As such, I accept it as evidence known to both parties in this present hearing.

Issue(s) to be Decided

- Is the tenant entitled to an order that the landlord cancel the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
- Should the tenant be unsuccessful in cancelling the Notice, is the landlord entitled to an order of possession, pursuant to section 55 of the *Act*?
- Is the tenant entitled to recover the filing fee for this Application, pursuant to section 72 of the *Act*?

Background and Evidence

The tenant submitted a copy of the tenancy agreement signed by the parties on March 3, 2018. The rent amount was, at the time of the agreement, \$1,550.00 per month, payable on the first of each month. A party no longer living in the unit was then a tenant and listed on the agreement, along with the applicant tenant here.

The landlord's position in this hearing is that the tenant was subletting the unit to third parties. They hold that the verbal agreement they made with the tenant is clear that the unit was only to be used for one family. In 1998, this was the understanding, and a tenancy agreement in essence can be verbal.

The landlord issued the One Month Notice to the tenant on March 25, 2020. The reason for issuance was for actions that "seriously jeopardized the health or safety or lawful right of another occupant or the landlord", and "put the landlord's property at significant risk."

The details of the cause provided by the landlord are that the tenant is renting out rooms in the house. This is not allowed by the landlord's insurance policy and if there is a loss or some other calamity, the landlord's insurance coverage will not apply.

The details in the One Month Notice note the landlord served a 'cease and desist' letter; however, the tenant continues this practice. That January 29, 2020 letter contains the following:

The landlord has learned that you are presently renting out suites in the basement to students. You should note that such activity violates the landlord's insurance policy for the premises and is in breach of City regulations. You are in effect running a business in a residential premise without permission, that is not permitted and puts the premises at jeopardy.

The position of the tenant is that the landlord knew about the arrangement they had in place for years. Three others, in addition to the tenant, gave written statements that explained the landlord was aware, having been told by the tenant that students were living in the unit and paying rent. The tenant's statement gives the information that students were renting rooms, and the landlord saw this directly when they did annual walkthroughs of the unit.

The agent for the landlord spoke to the issue of insurance, and the local City bylaws. They stated the insurance agent they spoke to will not cover the policy if there are "sub-renters". The agent also consulted with an official of the city, who stated "if someone is renting out rooms a license is needed."

The tenant stated that the landlord spoke to them directly when it came time to renew insurance, and they provided that the landlord stated it would cost more. The tenant stated they never saw documentation for this. After this, the landlord then proceeded with the January 29 letter and then the One Month Notice.

Analysis

Section 47(1) of the *Act* contains the following provisions:

- (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
 - (d) the tenant or a person permitted on the residential property by the tenant has

- i. significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - iii. put the landlord's property at significant risk.
- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent. . .

Section 47(4) of the *Act* states that within 10 days of receiving a One Month Notice a tenant may dispute it by filing an Application for Dispute Resolution.

In this case, the One Month Notice was issued pursuant to section 47 and I accept the landlord's evidence that they served this document in person to the tenant on March 25, 2020.

When a landlord issues a One Month Notice and the tenant files an application to dispute the matter, the landlord bears the burden of proving they have grounds to end the tenancy and must provide sufficient evidence to prove the reason to end the tenancy.

I shall examine the issue of the validity of the One Month Notice by examining whether "sub-renters" in fact occupied the unit. Then I shall examine whether an insurance policy or City bylaw may dictate what is allowed by the *Act*.

I give weight to the evidence of the tenants that shows the landlord was aware of the situation with students renting rooms in the rental unit. There were annual visits by the landlord into the unit; the tenant has shown that virtually each time the landlord's attention was drawn to what was happening in all areas of the unit combined. I find this would include knowledge of the number of occupants in the unit at that time, sufficient to establish that rooms were being rented for periods of time.

A term allowing renters does not appear in the written tenancy agreement, despite the landlord submitting that they made the terms clear to the tenant. There is thus no evidence to show that this term was even an issue with the parties entered into the tenancy agreement.

This does not equate to a sub-letting situation. Residential Policy Guideline 19 specifically describes subletting: "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."

The evidence does not show how the situation with students in the rental unit was described to an insurance agent and/or a representative of the city. If the situation was called a sub-tenancy, that term is inaccurate and not applicable. The agent representing the landlord in the hearing was not clear on this point. I find it more likely than not the insurer or municipality was not fully informed about the situation to pronounce it running against an insurance policy or city bylaws.

On this issue I also consider the fact that the landlord did not issue the One Month Notice for the specific reason that the tenant was sub-letting without the written consent of the landlord. That space is left blank.

Rather, the reason for issuance of the One Month Notice is that of an intangible situation involving risk. This may necessarily demand insurance; however, I find the reason as stated on the document refer to *actions that have already occurred*, instigated or caused by the tenant or someone they have admitted. I find this piece of section 47 - - as a cause for ending a tenancy -- is for something the tenant has done.

In terms of what practices the City finds it mandatory to license, I also find the tenant here is not subletting whilst separate from the unit. If the landlord is presenting a bylaw of the city as the pretext for issuing the One Month Notice, they have not provided a copy of that bylaw in the evidence.

I find that even if the landlord is not able to obtain insurance as a result of the tenant renting rooms to other occupants, the tenant is not in breach of the verbal tenancy agreement or the *Act* and as such, the landlord has no cause to end this tenancy.

For the reasons outlined above, I find the One Month Notice is invalid, and not issued on proper grounds to end the tenancy. I so order the One Month Notice to be cancelled.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee paid for this application. I authorize the Tenant to withhold the amount of \$100.00 from one future rent payment.

Conclusion

For the reasons above, I order the One Month Notice issued on March 25, 2020 is cancelled and the tenancy remains in full force and 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 *Act*.

Dated: June 9, 2020

Residential Tenancy Branch