



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX MID-ISLAND REALTY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

On July 27, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a One Month Notice to End Tenancy for Cause, to Order the Landlord to comply with the Act, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord attended the hearing at 11:00 a.m. and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. At 11:22 a.m. the Tenant called into the hearing and was affirmed. The parties testified that they exchanged the documentary evidence that I have before me.

Preliminary Matters

Section 63 of the Act allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision and include an Order. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms for a Settlement Agreement with the input from both parties. The parties could not find consensus on the terms of a Settlement Agreement; therefore, the following testimony and evidence was heard, and a Decision made by myself (the Arbitrator).

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause, dated July 27, 2020 (the “One Month Notice”), be cancelled, in accordance with Section 47 of the Act?

If the One Month Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with Section 55 of the Act?

Should the Tenant receive an Order for the Landlord to comply with the Act, in accordance with Section 62 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord provided the following terms of the tenancy:

The one-year, fixed-term tenancy began on July 3, 2020. The rent is \$875.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$437.50.

The Landlord submitted an Addendum to the Residential Tenancy Agreement and pointed out clause #1: *Property will be occupied by one adult only. Tenants agree they may be required to pay additional monthly rent for additional occupants.* The Landlord also pointed out clause #8: *The tenant will not sub-let the rental unit without the landlord's written approval and the landlord having prior opportunity to screen & approve the proposed new tenant.*

The Landlord submitted that the Tenant, after agreeing to be the only occupant of the rental unit, now has a roommate.

The Landlord testified that he was advised that he can not have a roommate on the lease. On July 27, 2020, the Landlord placed a One Month Notice, dated July 27, 2020, in the Tenant's mailbox. The Landlord selected "Tenant has assigned or sublet the rental unit without landlord's written consent" as the reason for the One Month's Notice to End Tenancy. In the Details of the Event, the Landlord indicated, "Tenant has allowed room mate to move in without landlord's written consent, and after previously denying he intended to do so". The Landlord indicated that the effective/move-out date on the One Month Notice is August 31, 2020.

The Landlord testified and submitted evidence to demonstrate that another person, the Witness A.T., has moved into the rental with the Tenant.

The Tenant stated that Witness A.T. does not live in the rental unit with him. The Tenant stated that it wasn't clear at the beginning of the tenancy that the rental unit was only for one person. The Tenant acknowledged that Witness A.T. stays over at the rental unit often but does not live there.

The Witness A.T. testified that she does not live in the rental unit and has another residence where she abides.

Analysis

The Landlord has served the One Month Notice on the Tenant based on Section 47(1)(i) of the Act. When I consider the validity of the reason the Landlord has for ending the tenancy, I must determine if the Landlord has sufficient evidence to prove that the Tenant has assigned the tenancy agreement or sublet the rental unit without first obtaining the Landlord's written consent as required by Section 34 of the Act. The standard of proof is based on the balance of probabilities. If I find that the reason set out in the Notice are valid and that the Notice complies with Section 52 of the Act, I must grant the Landlord an Order of Possession for the rental unit in accordance with Section 55 of the Act.

I accept that the Landlord has served the One Month Notice for the reason that the Tenant has assigned or sublet the rental unit without Landlord's written consent. I also acknowledge that the Landlord provided context and referred to a roommate moving in without the Landlord's written consent.

I accept the undisputed testimony that the Tenant is still living in the rental unit and as such, find that the Tenant has not assigned the tenancy agreement or sublet the rental unit. As the service of the One Month Notice is based on the reason of assignment or subletting; and not on the breach of a material term of the tenancy, I find that the One Month Notice is invalid and therefore, cancelled.

The Tenant failed to provide any evidence regarding the need for the Landlord to comply with the Act; therefore, I dismiss that part of the Tenant's claim.

I find that the Tenant's Application has some merit and that the Tenant is entitled to recover the cost of the filing fee for this Application for Dispute Resolution.

For the purposes of this ongoing tenancy I will clarify the term of the Addendum to Residential Tenancy Agreement that was discussed and agreed upon during this hearing; specifically:

1. The rental unit will be occupied by one adult only. The tenant cannot have a roommate or additional occupants. This is a material term of the tenancy.

Conclusion

The One Month Notice is cancelled, and the tenancy will continue until ended in accordance with the Act.

As compensation for the filing fee, I authorize the Tenant to deduct \$100.00 from a future rent payment to the Landlord, in accordance with Section 72 of 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: September 1, 2020

Residential Tenancy Branch