



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order to the landlord to make repairs to the rental unit pursuant to section 32.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail. The tenant stated that his first documentary evidence submission (a copy of the tenancy agreement and the notice to end tenancy) were served with the hearing package. The landlord disputed this claim stating that no such documents were served. The tenant stated that he did not have any proof of service for these two documents. On this basis, I find on a balance of probabilities that the tenant failed to provide the two documents and they are excluded from consideration in this decision. Both parties confirmed the tenant served the landlord with the second late package on August 4, 2020. The landlord stated that the tenant was served with his late documentary evidence on August 10, 2020 via Canada Post Registered Mail. The tenant disputes that it was not served, however the tenant confirmed that the address for service that was provided was a mailing address at a post office box. The landlord argued that the late evidence is crucial to establishing his notice to end tenancy and that he was forced to delay serving the evidence due to being out of town and the current state of emergency. A review of the Canada Post website online tracking shows that the landlord submitted the package for delivery on August 11, 2020 and that attempted service was made on August 12, 2020 where a Notice card was left. I find that as the landlord has argued that this is crucial evidence in support of the 1 month notice and the above noted reasons that there is no prejudice to the tenant in delaying the hearing for

an adjournment. As such, the hearing is adjourned to allow the tenant to pick up the landlord's documentary evidence package as soon as possible.

The tenant is to immediately attend to collect the notice card from his postal box and pick up the landlord's submitted documentary evidence. The hearing shall be resumed on the adjournment date set in the notice of adjournment attached to this decision.

On September 29, 2020 the hearing resumed with both parties present via conference call. The tenant confirmed the pickup of the landlord's documentary evidence package.

At the outset, the tenant's application was clarified. The tenant seeks an order cancelling a 1 month notice and a request for repairs regarding a cookstove. The tenant confirmed that the request for repairs is unrelated to the notice to end tenancy. On this basis, pursuant to Rules of Procedure 2.3 regarding unrelated issues, the tenant's request for repair is dismissed with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on January 15, 2019 on a fixed term tenancy until January 15, 2020 and then ends as per the submitted copy of the signed tenancy agreement dated January 15, 2019. The monthly rent was \$1,800.00 payable on the 1st day of each month. A security deposit of \$900.00 was paid.

Both parties confirmed that on June 30, 2020, the landlord served the tenant with the 1 Month Notice dated June 29, 2020 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of August 1, 2020 and that it was being given as:

- the tenant has allowed an unreasonable number of occupants in the unit;
- the tenant or person permitted on the property by the tenant has:
 - put the landlord's property at significant risk; or

- the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- the tenant has assigned or sublet the rental unit/site/property/park without the landlord's written consent.

The details of cause state:

The termination is based on the evidence discovered during an investigation which was the result of the leak reported on May 27, 2020 by the building's property manager. The evidence showed that the 1-bedroom unit is being sublet to three separate individuals. The subletting the unit goes against the executed contract and without landlord's prior consent. All three current residents have confirmed that they do not know Mr. V. and have never worked for him. Furthermore, there is evidence of misuse of the property and a lack of proper maintenance that is causing a hazard and health risk to the current occupants and neighbors. Also unauthorized alteration to the unit has caused a great expense for the landlord to return the unit to its previous and original condition.

As a result of the listed issues and unauthorized use of the property, I am terminating the contract and expect the unit to be returned to the landlord by Aug 1, 2020.

The landlord clarified that all of the selected reasons for cause are centralized under one primary issue in that the tenant has sublet the rental unit without the landlord's written consent.

Both parties confirmed in their direct testimony that the signed tenancy agreement lists the named tenant and a company, "Zeta Enterprises" as the tenants. The landlord argues that the tenant has sublet the rental unit to 3 persons that are not the employees of the listed company. The tenant disputes this claim arguing that all occupants are employees of the listed company.

The landlord has submitted copies three emails from K.I., C.G.M. and S.N. which details that these three persons are residing in the rental premises. Each provide details of their tenancy with a company, "Nova Relocation Inc." and that they occupy the premises with the other two listed persons in these emails. It also states, "I hereby certify that I am not an employee of Zetan Enterprises Corporation nor have I ever been employed by them."

The tenant stated that these persons are employees of the Zetan Enterprises and argues that the submitted emails are fraudulent. The tenant refers to copies of "Service Agreement" dated January 1, 2020 for T.K.K. as a "Professional Beauty and Massage

Services”; a completed Form K dated May 28, 2020 for T.K.I. and 3 other individuals, D.B., M.K. and M.B. The tenant also argues that he has submitted a copy of K.I.’s passport which shows that the names on the provided emails are incorrect as it shows a name with the initials, T.K.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed affirmed evidence of both parties that the landlord served the tenant with a notice to end tenancy dated June 29, 2020 via email on June 29, 2020.

The landlord’s primary reason for the notice to end tenancy is that the tenant is subletting the rental unit to non-employees. Although the tenant has disputed this claim, the landlord has submitted copies of 3 emails from the current occupants, K.I., C.G.M. and S.N. which details that these three persons are residing in the rental premises. Each provide details of their tenancy with a company, “Nova Relocation Inc.” and that they occupy the premises with the other two listed persons in these emails. It also states, **“I hereby certify that I am not an employee of Zetan Enterprises Corporation nor have I ever been employed by them.”** The tenant has not provided any evidence that these emails are fraudulent. Instead the tenant repeatedly points out that the name on the Form K, passport and Service Agreement reflect a different name spelling of K.I. I note that on each of these documents provided by the tenant, that the names differ. I find on this basis that the tenant has not provided sufficient evidence for me to determine that the emails are fraudulent.

As such, I find on a balance of probabilities that the landlord has provided sufficient evidence that the tenant is subletting the rental premises to non-employees of the listed company. The emails are clear in that they each state that they are not employees of the tenant’s company now or ever. The emails also state that they were placed in the rental unit through an agreement with “Nova Relocation Inc.” and each provide details of their tenancy. On this basis, the 1 month notice dated June 29, 2020 is upheld. The tenant’s request to cancel the 1 month notice is dismissed.

Pursuant to section 55 of the Act, the landlord is granted an order of possession. As the effective end of tenancy of August 1, 2020 has now passed, the order of possession shall be effective two days after it is served upon the tenant.

Conclusion

The landlord is granted an order of possession.

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 29, 2020

Residential Tenancy Branch