



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling a One Month Notice to End Tenancy for Cause (Notice) issued by the landlord.

The tenant and the landlord's agent (agent) attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The agent confirmed receiving the tenant's evidence and that the landlord has provided no evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and/or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice?

Background and Evidence

The tenant filed into evidence a written tenancy agreement showing this tenancy began on February 1, 2013, with another landlord at the time, and with two tenants listed. The undisputed evidence is that the current landlord took ownership of the residential property in or around April 2019.

The One Month Notice to End Tenancy for Cause which is the subject of this application, was dated July 31, 2020, for an effective move out date of September 1, 2020. The agent confirmed serving the Notice personally to the tenant, on or about August 1, 2020. The tenant's application was made on August 2, 2020.

The cause listed on the Notice, submitted into evidence by the tenant, alleged that the tenant has assigned or sublet the rental unit without the landlord's written consent.

It is noted that the landlord did not submit evidence prior to the hearing to demonstrate why he believed the tenant had assigned or sublet the rental unit.

On the Notice, the landlord provided details of the causes, more specifically he wrote:

During the month of Dec 2019, tenant did not reside in suite, and sublet without written consent of landlord.

The agent confirmed that the issue occurred when the tenant left for the month of December 2019, to visit his family in another country, and had someone move in during that time.

The tenant's evidence showed that his family lives away and he traveled to another country to visit them for Christmas. During this time, he had a house sitter stay in his room to help with the rent. The tenant submitted that he had the landlord's verbal, but not written, permission and when he returned, he went back to the rental unit. The tenant submitted that he had done this for the last six years.

The tenant submitted that he made sure the house sitter was suitable and trustworthy, and when he informed the landlord, the landlord said he wanted his agent to meet with her. At that point, according to the tenant, he was given the go-ahead.

The tenant submitted that upon his return, the rental unit was neat and tidy and at no time did the landlord or the agent inform the tenant that the house sitter was not allowed to stay in his room.

Upon his return, according to the tenant, the landlord sent him an eviction letter in January, then met with the tenant and said it was all a big misunderstanding, and then on January 24, 2020, the landlord told him “we just don’t get along” and suggested the tenant find a new place to live. The tenant submitted that the landlord then offered him cash to move and a position as property manager with another place to live.

The tenant submitted that during Covid-19 lockdown, the landlord followed the tenant’s roommate to the front door and accused the tenant of subletting the suite to him, the roommate. The tenant submitted that on April 23, 2020, the landlord appeared out of the shadows around midnight, and insisted on discussing the “illegal subletter”, his roommate.

The tenant explained that there has always been two occupants in the rental unit, as shown by the original tenancy agreement and has never been an issue before December 2019. The tenant submitted a copy of a letter sent to the landlord requesting that he respect his right to quiet enjoyment.

Analysis

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

On August 1, 2020, the landlord had the tenant served with the 1 Month Notice. The 1 Month Notice set out that it was being given as the tenant has assigned or sublet the rental unit without the landlord's written consent. Subparagraph 47(1)(i) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a 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.

In order to prove the 1 Month Notice is valid, the landlord must show that the tenant did purport to sublet the rental unit.

I have reviewed Residential Tenancy Policy Guideline 19, which outlines the definitions of both an assignment and a sublet.

An 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.

As to subletting, this refers to when 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.

In the case before me, the evidence clearly shows the tenant left the rental unit for an extended visit with his family who live out of the country. The tenant clearly demonstrated that he was away temporarily, had a person stay in the rental unit on a temporary basis and upon the tenant's return, the temporary occupant left the rental unit. The tenant remains living at the rental unit as a tenant. I therefore find that he has not assigned his rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.

I also find the evidence clearly demonstrates that the tenant did not enter into a new agreement with any person staying temporarily in the tenant's room. The house sitter can be more accurately described as a temporary occupant, not a sub-tenant.

For these reasons, I find the landlord has submitted insufficient evidence that the tenant has assigned or sublet the rental unit without the landlord's written consent.

As a result of the above, the 1 Month Notice is **cancelled** and is of **no force or effect**.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

Orders and cautions to the landlord-

Under section 62(3) of the Act, the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

After reviewing the tenant's undisputed evidence, I find it necessary to issue orders and cautions to the landlord.

The tenant's evidence shows a request to the landlord for compliance with his obligations under the Act, to ensure that the tenant has quiet enjoyment of the rental unit. The series of events listed included an email sent to the tenant on December 30, 2019, telling the tenant his tenancy was ending. Further the email said a Two Month Notice to End Tenancy for Landlord's Use of Property would be issued. There is no evidence that Notice was issued.

The tenant wrote a timeline stating that the landlord came to the rental unit on January 24, at 8:30 p.m. and threatened the tenant with eviction for subleasing the suite. Then at 5:30 p.m. on March 29, during the Covid-19 lockdown, the landlord appeared at the front door and announced that as two people, the tenant and his roommate, were staying, the tenant would have to pay double rent.

Then again on April 23, at 11:30 p.m., again during the Covid-19 lockdown, the landlord approached the tenant in his front garden, again suggesting that the tenant was subletting.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy, freedom from unreasonable disturbance, and exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the Act and use of common areas for reasonable and lawful purposes, free from significant interference.

Pursuant to section 29 of the Act, a landlord may not enter a tenant's rental unit without giving a proper written notice of entry to do so. Among other requirements, section 29(1)(b)(ii) of the Act requires that the notice of entry must be made at least 24 hours prior to the planned entry, contain the purpose for entering, which must be reasonable, and provide a specific time and date.

Residential Tenancy Branch Policy Guideline 6 states that a breach of a tenant's right to quiet enjoyment occurs with frequent and ongoing interference by the landlord, such as the case here, an attempted eviction through an email and unannounced visits to the tenant, some late at night.

In considering the undisputed evidence of the tenant, I find that the landlord repeatedly entered the residential property common areas and the rental unit without notice, in order to make unlawful demands of the tenant regarding his tenancy.

I inform the landlord of his obligations to provide the tenant with a proper written notice to attend the rental property, which must be at least 24 hours in advance, and in consideration of the deemed service provisions of section 90 of the Act.

If the landlord chooses to attach the notice of entry to the tenant's door, the tenant is not deemed to have received that notice for 3 days and the entry may then not be earlier than 24 hours later. If the landlord chooses to send the notice by registered mail or mail, the tenant is not deemed to have received the notice for 5 days and the entry may then not be earlier than 24 hours later.

As I have found the tenant provided undisputed evidence that the landlord has unlawfully attempted to end the tenancy by email and entered the residential property and rental unit without proper notice, I therefore order the landlord to comply with his obligations as described above in providing notice to the tenant, which must also contain the specific time, date, and purpose for entering.

The landlord is cautioned that his failure to comply with this order and by interfering with the tenant's right to quiet enjoyment could result in the tenant being successful in future applications where he may seek compensation for a loss of quiet enjoyment and a devaluation of the tenancy and an order suspending the landlord's rights to enter the rental unit.

If the landlord would like to review his legal obligations, the landlord may want to consult with staff at the Residential Tenancy Branch if he has questions about those obligations.

Conclusion

The tenant's application has been granted as I have ordered that the landlord's One Month Notice to End Tenancy for Cause, dated July 31, 2020 be cancelled and that the tenancy continue until ended in accordance with the Act.

I have ordered the landlord to comply with the Act and issued cautions in the event he fails to comply.

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 10, 2020

Residential Tenancy Branch