



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

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; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by their agent (the "landlord").

As both parties were present service was confirmed. The parties each testified that they were served with the respective materials. Based on the testimonies I find each party duly served with the respective materials in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for the application from the landlord?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in September, 2017. The current monthly rent is \$1,230.00 payable on the first of each month.

The landlord issued a 1 Month Notice dated August 10, 2020 indicating the reasons for the tenancy to end as:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

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

The landlord testified that the tenant has been residing in the rental unit throughout the course of the tenancy but believe that they have allowed other individuals not identified on the tenancy agreement to reside in the suite at various times.

The landlord submits that emergency services have attended the rental unit on a number of occasions for various reasons. The landlord specifically mentioned an instance where an occupant of the rental unit passed away and medical services attended at the scene.

The landlord and their witness testified that they have observed personal possessions going missing from cars in the area and they believe that this is attributable to the occupants of the rental unit. Among the landlord's documentary evidence is a form letter attesting to the landlord's facts signed by other occupants of the neighbourhood.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or that the tenant has assigned or sublet the rental unit without the landlord's written permission.

Based on the totality of the evidence, I find that the landlord has not met their evidentiary burden on a balance of probabilities to show that there is a basis for this tenancy to end.

While the landlord submits that the tenant has assigned or subleased the tenancy agreement, they conceded that at all relevant times the tenant has remained an occupant of the rental building. Residential Tenancy Policy Guideline 52 clarifies the meaning of both assignment and subleases. As provided in the Policy Guideline "assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party". The Guideline also provides that under the Act, in situations where the original tenant remains in the rental unit and rents out space within the unit to others, this is not considered to be a sublet.

I accept the undisputed evidence of the parties that the tenant has remained in the rental unit at all relevant times. As such, I find that there has been no assignment nor sublet such that it gives rise to a basis for a Notice to End Tenancy to be issued.

The landlord submits that there have been several instances where emergency services have attended at the rental unit and that has caused significant interference and unreasonable disturbance of the other occupants of the rental community. I do not find the submissions of the landlord to be particularly convincing. I find insufficient evidence as to who is contacting emergency services to have them attend the rental unit. Emergency services and police can be contacted by anyone and made to attend. I find that their presence is little evidence of any issue as they may attend regardless of the validity of any underlying complaint.

I find the written statement, signed by the other occupants of the neighborhood that the mere presence of emergency services in the area to be an unreasonable disturbance, to not be sufficient to establish disturbance attributable to the tenants. I find the position of the signatories that the mere attendance of emergency services to be a disturbance to be an unreasonable position. I am unable to find that the presence of emergency

personnel, conducting their duties in a manner consistent with their professional duties to be unreasonable or a significant disturbance.

As found above, there is insufficient evidence of the identity of the person contacting emergency services to have them attend the rental unit. If the presence of emergency services is the issue, as seems to be indicated in the written statement, then it is the individual or individuals who are contacting and having emergency personnel attend who is the one causing the disturbance and interference, not the tenants.

I note that the landlord's characterization of medical personnel attending when someone in the rental unit passed away as disturbance and interference to be a wholly unsympathetic position. When an individual passes away, emergency medical personnel is entirely the appropriate service to be called to attend. To characterize the passing of a person as a disturbance and consider it only through the lens of the inconvenience to the other occupants of the rental complex is an attitude worthy of censure and rebuke.

I find that the accusations that the tenant or someone permitted on the property by the tenant is responsible for property thefts to not be supported in the evidence and simply be suppositions without merit. The landlord and other occupants make vague mention of missing items without providing particulars or why they believe that the tenants are the source of the issue. I find insufficient evidence that any thefts have occurred let alone that they are attributable to the tenants or individuals allowed on the rental property by the tenants.

I find that both individually and cumulatively the landlord has failed to meet their evidentiary burden to establish that the tenancy should end for the reasons indicated on the 1 Month Notice. Accordingly, I allow the tenants' application to cancel the notice.

As the tenants were successful in their application they are entitled to recover the filing fee from the landlord. As this tenancy is continuing, the tenants may satisfy this monetary award by making a one-time deduction of \$100.00 from the next scheduled rent payment.

Conclusion

The tenants' application to cancel the 1 Month Notice is granted. The notice is of no further force or effect. This tenancy continues until ended in accordance with the Act.

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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: October 2, 2020

Residential Tenancy Branch