



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RR, RP, OLC, FFT

Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause received November 15, 2020. The grounds stated in the Notice are:

1. The tenant or a person permitted on the property by him has put the landlord's property at significant risk,
2. The tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so, and
3. The tenant has assigned or sublet the rental unit without the landlord's written consent.

Any of these three grounds, if proved, are lawful cause for ending a tenancy under s. 47 of the *Residential Tenancy Act* (the "RTA").

The tenant also seeks: 1) a rent reduction for loss of the value of two bedrooms the landlord wishes he stop using as bedrooms, for loss of a view and the use of a garage and for compensation for picking up leaves, 2) a repair order for the hearing (this claim withdrawn by the tenant at hearing), and 3) an order that the landlord comply with the law and the tenancy agreement relating to the tenancy commencement date shown in the written tenancy agreement and regarding utilities contributions from other tenants and use of the garage.

At the start of the hearing the parties were informed of Rule 2.3 of the Rules of Procedure, which states that claims made in an application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without

leave to reapply. This matter has been scheduled on an early basis because it concerns the validity of a notice to end tenancy. I determined that the validity of the Notice is question is a discrete issue and that the balance of the tenant's claims were unrelated to the question of grounds for the notice. Accordingly, as stated at hearing, the validity of the Notice will be determined at this hearing and the remainder of the tenant's claims are dismissed with leave to re-apply.

At the start of the hearing the style of cause was amended by consent to include the landlord's last name.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the evidence presented at this hearing show on a balance of probabilities that the tenant has given good cause to end the tenancy under any of the three grounds cited in the Notice?

Background and Evidence

The rental unit is the main and upper floor of a relatively new house. A laundry room in the basement also forms part of the rented premises. There is a basement suite, rented to others. The landlord says the rental unit is composed of three bedroom but it also has a "study" on the main floor and a "laundry room" on the upper floor which has been plumbed and wired in to support a washer and dryer.

The home is rented furnished. The tenancy started in September 2016. Prior to that it appears the tenant was an occupant of the study room, sharing cooking and bathroom facilities with other occupants and with landlord's niece who living there and oversaw occupation of the unit.

According to the tenant, around 2016 the landlord's niece moved away and he began renting more area of the rental unit from the landlord, ultimately renting the entire space.

The parties carried on their relationship for about three and half years when, finally, in January 2020, they entered into a written tenancy agreement. That agreement shows that the monthly rent is \$4100.00, due on the fifteenth of each month. The tenant paid a \$1925.00 security deposit. The tenancy agreement states “max 5 total occupants.”

The standard Residential Tenancy Branch one month Notice to End Tenancy for cause has a box or area for a landlord to provide “Details of Cause.” The form directs the landlord to “describe what, where and who caused the issue and include dates/times, names, etc. This information is required. An arbitrator may cancel the notice if details are not provided.”

The Details of Cause provide an outline of the grounds for eviction. Allegations not contained the Details of Cause portion might not be considered at a hearing because a tenant is entitled to have the particulars of the allegations being made in the Notice.

In this case, as Details of Cause the landlord attached a letter to the tenant dated October 30, 2020 containing the details of the cause for eviction. The letter indicates that in January 2020 a City inspector wrote a letter indicating that the top floor laundry room and the main floor study could not be used as bedrooms. A complaint about a bed and breakfast operation caused the inspection.

The landlord states in the letter that she does not have insurance to cover a bed and breakfast operation in the home. The letter states her insurer says that there must be no more than three unrelated persons in the rental unit and that “the City bylaw is the same.” The letter indicates the landlord feels entitled to know who the occupants are and suggests ways the tenant could have five occupants but still comply with the insurance requirements of “no more than three unrelated persons.”

The landlord testified that tenant is carrying on a bed and breakfast operation. She notes that the plans for the home, which she designed on her own, and filed with the City show only three bedrooms in the rental unit. The study and upper laundry room should not be used as bedrooms.

The landlord testified to the fact in the letter that she cannot get insurance for the home if more than three unrelated persons are living in the rental unit and so if the tenant wants to have five people there, some of them must be related so as to comply with this requirement.

She thinks that presently there are four single men plus the tenant occupying the rental unit sharing the facilities. She wants to know who they are and to approve them beforehand.

The landlord testified about breakdowns and repairs at the rental unit. Those issues do not appear to relate to the grounds given in the Notice in question.

The tenant testified that he had bed and breakfast visitors to fill gaps between long term roommates. He indicated that he has no more because the landlord revoked or withdrew permission with the City.

He says that he cannot get tenant insurance for more than three people. It is noted that the tenancy agreement does not require the tenant to take out insurance of any kind.

He says the upper laundry room was furnished as a bedroom by the landlord and that in 2016 all five rooms were rented as bedrooms by the landlord's niece. He says it was the landlord who placed him in the "study" bedroom.

In response the landlord indicated that the tenant was first assigned the master bedroom and later the study.

Analysis

The ending of a tenancy is serious matter. An arbitrator will require clear and cogent evidence of cause within the terms of the grounds cited in the Notice and as particularized in the Details of Cause portion of the Notice.

A. Putting the Landlord's Property at Significant Risk

The landlord has failed to establish this ground. It is assumed that the risk is the fact of the landlord's inability to obtain insurance. Firstly, it has not been shown that she cannot. Merely that her current insurer will not cover her. In any event, whether a landlord can or cannot obtain insurance is not the result of the tenant doing anything he is not supposed to do in that regard. The tenancy agreement limits him to five occupants and he appears to be in compliance with that requirement.

The landlord's letter of October 30 intimates that the number of occupants in this rental unit is contrary to a zoning bylaw. That has not been shown at this hearing. No bylaw

was presented or referred to in order to establish that allegation. The City inspector's letter was not adduced in order to determine whether a violation of some kind had occurred.

B. Breach of a Material Term

Section 47(1)(h) of the *RTA* provides that a landlord may end a tenancy if the tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The landlord has not shown the tenant has breached any material term or for that matter, any term of the tenancy agreement.

C. The Tenant has Assigned or Sublet Without Consent

As per Residential Tenancy Policy Guideline 19, "Assignment and Sublet," "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.

The Guideline notes that under a sublease agreement, "the original tenant transfers their rights under the tenancy agreement to a subtenant."

The evidence establishes that the tenant is operating what might be considered a rooming house. No person but the tenant is entitled to exclusive possession of the rental unit, subject to the licence granted to his roommates. He has not assigned his tenancy nor sublet the rental unit to anyone.

In result, the landlord has failed to establish any of the grounds listed in the one month Notice for ending this tenancy.

It should be noted that the insurance issue is a relatively new and potentially serious one for either party. I urge them to seek out an amicable solution, either by finding an insurer or renegotiating the terms of their tenancy agreement.

As a comment outside the realm of this adjudication and not binding on the parties, it is normal and reasonable for a landlord to know who the paying occupants of her rental unit are, though, without any term requiring it in the tenancy agreement, a tenant has no obligation to seek a landlord's prior approval for any of them.

Conclusion

The Notice to End Tenancy dated November 14, 2020 is hereby cancelled.

As the tenant has been successful he is entitled to recover the \$100.00 filing fee for this application. I authorize him to reduce his next rent by \$100.00 in full satisfaction of the fee.

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: February 16, 2021

Residential Tenancy Branch