



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT, OLC, MNDCT, LRE

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on December 03, 2020 (the "Application"). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated November 27, 2020 (the "Notice");
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement;
- For compensation for monetary loss or other money owed;
- To suspend or set conditions on the Landlord's right to enter the rental unit; and
- For reimbursement for the filing fee.

The Tenant appeared at the hearing. The Landlord appeared at the hearing with J.C. to assist. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenant confirmed the request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement is the same as the dispute of the Notice and therefore I have not considered a request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement separately from the dispute of the Notice.

Pursuant to rule 2.3 of the Rules of Procedure (the "Rules"), I told the Tenant at the outset that I would hear the dispute of the Notice and request for reimbursement for the filing fee but would dismiss the remaining requests with leave to re-apply as they are not sufficiently related to the dispute of the Notice. The requests for compensation for monetary loss or other money owed and to suspend or set conditions on the Landlord's

right to enter the rental unit are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and the oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant testified as follows in relation to tenancy agreements for this matter. The parties entered into a tenancy agreement and subsequently extensions to the tenancy agreement. The original tenancy agreement was a written agreement on the RTB form. The tenancy started in the fall of 2013 and was a month-to-month tenancy. Rent was \$1,400.00 per month due on the first day of each month. A security deposit in the range of \$650.00 was paid. The agreement was signed by J.C. and the Tenant. The Tenant has signed eight or ten extensions to the tenancy agreement since 2017. The last extension was signed by the parties August 26, 2020.

J.C. testified as follows in relation to tenancy agreements for this matter. The original tenancy agreement was a written agreement on the RTB form. The tenancy started January 01, 2014 and was for a fixed term ending December 31, 2014. Rent was \$1,700.00 per month due on the first day of each month. A \$850.00 security deposit was paid. The agreement was signed by J.C. and the Tenant. The original tenancy agreement included a second tenant. When the second tenant moved out, a new tenancy agreement was signed between the parties.

J.C. further testified as follows. The new tenancy agreement signed between the parties was a written agreement on the RTB form. The tenancy started November 16, 2014 and was for a fixed term ending June 30, 2015. Rent was \$1,700.00 per month due on the first day of each month. The tenancy agreement was renewed, and extensions were signed, every six months. The last extension was signed by the parties August 26, 2020.

The Notice was submitted as evidence. The grounds for the Notice are:

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

The parties agreed the Notice was served on the Tenant in person November 27, 2020.

The Landlord and J.C. provided the following relevant testimony and submissions in relation to the grounds for the Notice.

The rental unit is a house with an upstairs and downstairs. The entire house was rented to the Tenant. There was only one kitchen and one bathroom in the house when it was rented to the Tenant. The Tenant has added a kitchen and bathroom to the rental unit without permission.

The Landlord inspected the rental unit in November of 2020 and realised for the first time that the Tenant was subletting and sharing the rental unit, both of which are prohibited in the tenancy agreement extension signed August 26, 2020. There are currently three people living in the rental unit. The house is a single family residence.

The house was only rented to the Tenant and the Tenant is the only person who is supposed to be living in the rental unit. The Landlord allowed the Tenant to have guests in the past; however, guests are not allowed in the latest tenancy agreement extension. The Landlord did not give the Tenant permission to sublet.

The Tenant rents another rental unit from the Landlord and lives at the other rental unit sometimes. In November of 2020, the Tenant moved out of the rental unit and lived in the other rental unit for a few months.

The Landlord and J.C. changed their testimony in relation to when the Tenant moved out of the rental unit to spring or summer of 2020 and also said they do not know when the Tenant moved out of the rental unit.

The Tenant provided the following relevant testimony and submissions in relation to the grounds for the Notice.

When the Tenant first viewed the rental unit and signed the tenancy agreement, there were two other people living in the rental unit with the Tenant and the Landlord was aware of this. The Tenant was not able to rent the rental unit by themselves and the Landlord was aware of this as the Landlord signed a form for the Tenant to obtain assistance. The Landlord accepted rent subsidies on the basis that the Tenant and two other people lived in the rental unit. There have always been two or three people living in the rental unit and the Landlord has always been aware of this.

There was a wet bar in the downstairs of the rental unit when the Tenant moved in. The Tenant has also plugged in a stove top for boiling water and heating things. There is no separate kitchen in the downstairs of the rental unit. The Tenant has not added a kitchen or bathroom to the rental unit and there has been no subdivision of suites. There has always been two bathrooms in the rental unit.

The Tenant has not vacated the rental unit or moved from the rental unit. The Tenant does not sublet the rental unit. There are two other people living in the rental unit with the Tenant. The Tenant's furniture is still in the upstairs of the house. Since the pandemic, the occupants of the rental unit have tried to stay in their own spaces.

In reply, J.C. testified that the Landlord and J.C. have seen people at the rental unit and allow guests but do not allow subletting.

The Tenant submitted signed statements from other occupants of the rental unit about living in the rental unit and the Landlord being aware of this.

The Landlord submitted the following documentary evidence:

- Typed written submissions;
- Two tenancy agreement extensions; and
- Handwritten letters from the Landlord and J.C., some of which are difficult to read.

Analysis

The Notice was issued pursuant to section 47(1)(i) of the *Residential Tenancy Act* (the “*Act*”) which states:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...

- (i) the 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...

The Tenant had 10 days from receiving the Notice to dispute it pursuant to section 47(4) of the *Act*. There is no issue that the Tenant received the Notice November 27, 2020. The Application was filed December 03, 2020, within time.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Policy Guideline 19 deals with assignment and sublet and states the following:

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...

An assignment may take place in various circumstances, such as a tenant leaving town, but still having a period of time left on a fixed-term tenancy agreement. The original tenant may wish to assign the tenancy agreement to a new tenant who **takes over** the tenancy agreement for the remainder of the term...

When a rental unit is sublet, 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. This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, **allowing the original tenant to move back into the rental unit**. The original tenant remains the tenant of the original landlord, and, **upon moving out of the rental unit granting exclusive occupancy to the sub-tenant**, becomes the "landlord" of the sub-tenant. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement...

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act.

The use of the word 'sublet' can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit, **granting exclusive occupancy to a subtenant, pursuant to a sublease agreement. 'Sublet' has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the Act, this is not considered to be a sublet.** If the original tenant transfers their rights to a subtenant under a sublease agreement **and vacates the rental unit**, a landlord/tenant relationship is created and the provisions of the Act apply to the parties. If there is no landlord/tenant relationship, the Act does not apply. Roommates and landlords may wish to enter into a separate tenancy agreement to establish a landlord/tenant relationship between them or to add the roommate to the existing tenancy agreement in order to provide protection to all parties under the legislation.

Example: John returns from his stay overseas and moves back into his rental unit and the subletting agreement between himself and Susan ends. Susan needs more time to find somewhere else to move to and asks John if he will **rent a**

portion of the unit for her exclusive possession until she is able to move.

John, without getting the written consent of the landlord, agrees. The landlord finds out about this arrangement and **issues John a One Month Notice to End Tenancy (form RTB-33) for John's failure to obtain the landlord's written consent to sublet.** At a hearing, **an arbitrator determines that since John remained in the rental unit and allowed Susan to stay as an occupant/roommate, this wasn't a sublet as contemplated by the Act. The notice to end tenancy is cancelled.**

(emphasis added)

The Landlord and J.C. testified that the Tenant moved out of the rental unit for a few months at some point. The Landlord and J.C. could not provide clear testimony on when this occurred and gave conflicting testimony on when this occurred.

The Tenant testified that he has not moved out or vacated the rental unit.

I find there is insufficient evidence before me to support that the Tenant moved out of the rental unit at some point during the tenancy. I do not see where this is supported in the documentary evidence and neither the Landlord nor J.C. pointed to documentary evidence to support their position about this. Further, the documentary evidence submitted by the Landlord is all self-authored other than the two tenancy agreement extensions. The tenancy agreement extensions do not support that the Tenant moved out of the rental unit at some point. The self-authored evidence is not sufficient to prove the Tenant moved out of the rental unit at some point during the tenancy.

In the circumstances, I am not satisfied the Tenant moved out of the rental unit at some point during the tenancy. Therefore, I am not satisfied the Tenant has assigned or sublet the rental unit, both of which require the Tenant to have moved out of the rental unit. I do not find it relevant whether the Tenant has added a kitchen or bathroom to the rental unit as the Tenant rented the entire house and I am not satisfied the Tenant has moved out of the house and therefore am not satisfied the Tenant has moved out of the rental unit. I find the Tenant has allowed other occupants or roommates to live in the rental unit with the Tenant, which is not the same as assigning or subletting the rental unit.

I acknowledge that the tenancy agreement extension signed August 26, 2020 states that subletting and sharing are not permitted. However, the issue before me is whether the Landlord had grounds to issue the Notice. The only ground for the Notice is that the

Tenant assigned or sublet the rental unit without first obtaining the Landlord's written consent. I am not satisfied the Tenant has assigned or sublet the rental unit. Therefore, I am not satisfied the Landlord had grounds to issue the Notice.

Given the above, the Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenant was successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant is permitted to deduct \$100.00 from one future rent payment as reimbursement for the filing fee.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenant is awarded reimbursement for the \$100.00 filing fee. The Tenant is permitted to deduct \$100.00 from one future rent payment as reimbursement for the filing 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 *Act*.

Dated: March 03, 2021

Residential Tenancy Branch