



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, PSF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) to have the landlord make repairs to the rental unit and to provided services or facilities required by the tenancy agreement or law.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. Both parties confirmed under affirmation that they were not making a prohibited recording of this hearing.

Preliminary and Procedural Issues

At the outset of the hearing the landlord stated they just received the tenant’s application for dispute resolution on Jul 12, 2021. The tenant testified that they tried to serve the landlord’s agent LC; however, they refused to accept service. The tenant testified that they then sent a copy to the landlord by registered mail on April 9, 2021, which was returned unclaimed. The tenant stated as a result they served the landlord in person on July 12, 2021.

At the hearing the tenant provided the tracking number of the Canada post tracking, which shows Canada post left two notification cards for the landlord to pick up the package and was returned to the tenant on May 14, 2021, as it was unclaimed by the landlord. I am satisfied based on the evidence that the tenant served the landlord in accordance with the Act. I find the landlord was deemed to have been served on April 14, 2021, five days after it was mailed.

Further, I have also reviewed the communication tab within the digital tab of this file. It shows on July 7, 2021 the landlord contact the Residential Tenancy Branch and was informed of the evidence process. On July 10, 2021 the landlord submitted their

evidence. Clearly the landlord was aware of this matter prior to July 12, 2021. Therefore, I did not find it prejudicial to either party to proceed with the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice issued on March 30, 2021, be cancelled?

Should the landlord be ordered to make repairs?

Should the landlord be ordered to provide services or facilities?

Background and Evidence

Neither party provided me with a copy of the Notice for my review or consideration. However, the parties agreed that the Notice was issued on March 30, 2021, with an effective vacancy date of May 3, 2021. The parties agreed that the Notice was issued in the proper form.

The parties agreed that the reason stated in the Notice was that the tenant has:

- assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 of the Act.

The landlord testified that the tenant has not vacated the rental unit; however, they have rented a room out.

The tenant testified that they live in the rental unit. The tenant stated that they were storing some belongings for a friend who was homeless. The tenant stated that they are not renting a room and the landlord can come and inspect the premises.

The landlord decline to do an inspection.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show that the tenant has:

- assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 of the Ac

Residential Tenancy Policy Guideline 19. Assignment and Sublet states in part the following.

Occupants/roommates

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.

Even if I accepted the landlord's evidence that the tenant has rented a room within the rental unit, although this was denied by the tenant; that would not be a sublet. The tenant remains living in the rental unit and has not given exclusive occupancy to a subtenant. This third party would be considered an occupant or roommate of the tenant.

I find the evidence does not support the Notice was issued for the reasons stated. Therefore, I grant the tenant's application to cancel the Notice issued on March 30, 2021. The tenancy will continue in accordance with the Act.

The tenant has further requested in their application for repairs to the rental unit. The details are as follows "I have requested for repairs to be done which I have wait for over a year almost 2 years which are not complete". I find this does not comply with section 59 of the Act, as the tenant must provided the full particulars, such as what repairs are needed and when were they have requested. The tenant submitted no evidence to support this portion of their claim. Therefore, I dismiss this portion of the tenant's application without leave to reapply.

The tenant has further requested in their application for the landlord to provide services or facilities required by the tenancy agreement, Act or Regulations. Where the tenant is required to provide the details is blank. I find this does not comply with section 59 of the Act, such as what services or facilities are required by the tenancy agreement or law. Therefore, I dismiss this portion of the tenant's application without leave to reapply.

Conclusion

The tenant's application to cancel the Notice, is granted. The balance of the tenant's application is dismissed without leave to reapply.

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: July 19, 2021

Residential Tenancy Branch