Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OPC OLC FFL FFT

Introduction

The tenant applied to dispute a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to section 47(4) of the *Residential Tenancy Act* ("Act"). In addition, they applied for an order under section 62 of the Act, and for recovery of the cost of the filing fee pursuant to section 72 of the Act. It should be noted that the request for an order under section 62 was in relation to a lock and chain that had been attached to the door of the rental unit; the lock and chain have since been removed. As such, this specific claim is now moot and is dismissed without leave.

By way of cross-application the landlord seeks an order of possession based on the Notice, and, recovery of the cost of the filing fee under section 72 of the Act.

Both parties, along with the landlord's son, and a witness for the landlord, attended the hearing. No service issues were raised (other than that a copy of the tenancy agreement was tendered into evidence by the landlord but was not served on the tenant).

The parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Issues

1. Is the tenant entitled to an order cancelling the Notice?

2. If not, is the landlord entitled to an order of possession?

3. Is party entitled to recover the cost of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on February 1, 2015. Monthly rent is $1,300.00 and the tenant paid a security deposit of $650.00. A copy of the written tenancy agreement was submitted into evidence by the landlord.

The landlord and his son testified that they served the Notice by both posting it on the door of the rental unit on June 7, 2021 and by sending it through registered mail. There is no dispute that the tenant was served the Notice in this manner.

A copy of the Notice was submitted into evidence by both parties, and there are three reasons checked off as to why the tenancy was to end. First, that there were an unreasonable number of occupants in the rental unit. Second, that the tenant or a person permitted into the rental unit has put the landlord's property at significant risk. Third, that the tenant has assigned or sublet the rental unit without the landlord's written consent.

The landlord and his son testified that there has been, since 2019, a "revolving door of tenants in and out" of the rental unit. The landlord is concerned about the "insurance aspect" of having these people come and go, oftentimes when the tenant was out of country for several months. In addition, the landlord testified that the various roommates or subletters have had loud parties. In response, the landlord testified that they spoke to the tenant a couple of times and put a letter on the door about the issue.

A tenant who resides in the lower portion of the residential property testified as a witness for the landlord. The witness testified that they have rented their rental unit since 1997. The landlord purchased the property in 2005.

The witness testified that she began seeing other people other than the tenant living in the property since 2019. In some cases, different sets of people (some individuals, some couples) live in the rental unit. Sometimes they live there for three to four months and then they leave. Some appear to be students. There were different people, and the witness did not know many of these strangers.

The tenant testified that she has had various people renting out spare bedrooms in the rental unit since 2019. If the landlord had a problem with this, the tenant was confused as to why it only became a problem in the last several months. The landlord knew about her roommates and did not previously have any issues with this.

In respect of the allegations of subletting, the tenant argued that at no time did she sublet the rental unit. She admitted that she has had roommates, and, she is also allowed to have friends over. Last, while she may have been away for extended periods of time visiting family in Hawaii and Jamaica, she has always resided in the rental unit. At no time did she ever move out of vacate the property.

It was curious, the tenant explained, that the landlord posted a “reminder” letter about the prohibition on subletting only after the remaining roommate moved out. And that it was rather odd that the landlord only then served the Notice on the tenant. Indeed, the tenant speculated that the landlord has only recently realized that he could get a much higher rent on the rental unit: “[the landlord] is trying to evict me to get higher rent.”

In rebuttal, the landlord’s son remarked, “yes, [the tenant] can have guests, but these are subletters.” The landlord fears that this renting out to subletters is going to continue, and there is an ongoing concern that the landlord does not know anything about the people living there or renting from the tenant. He then added that other tenants in the residential property have had their right to quiet enjoyment breached due to the tenant’s subletters. In response to this remark the tenant asked, “if there is so much noise, then why are there no complaints?”

Analysis

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based. In this dispute there were three grounds under section 47 of the Act.

First, the Notice was issued because the tenant had “an unreasonable number of occupants in a rental unit” (see section 47(1)(c) of the Act).

The landlord provided no evidence, made no argument, and gave no submissions, as to whether or how the various roommates (or subletters, as the landlord has denoted them) ever constituted an “unreasonable number” of occupants in the rental unit. From the evidence, there appeared to be anywhere from five occupants (the tenant and her four children) to a maximum of perhaps eight occupants. This does not factor in the

number of occupants who may have been in the rental unit while the tenant was travelling elsewhere.

In any event, the landlord has failed to discharge their onus of proving that whatever the actual number of occupants were in the rental unit, that this number was somehow an unreasonable number. For this reason, this specific ground under which the Notice was given has not been proven.

Second, the Notice was issued because the "the tenant or a person permitted on the residential property by the tenant has [. . .] put the landlord's property at significant risk" (see section 47(1)(d)(iii).

With respect to this ground, there is no evidence before me, either direct or circumstantial, to find that the tenant or any of her roommates have ever put the landlord's property at significant risk. Certainly, while the landlord's concerns about having strangers live upstairs is understandable, there is nothing in evidence proving that the tenant or her roommates have ever in fact put the landlord's property at significant risk.

And, while the landlord's son submitted that there are insurance issues with the additional individuals residing in the rental nit, the landlord provided no documentary evidence from their insurance company to support this concern.

Given the above, then, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the second ground on which the Notice was given.

Third and last, the Notice was issued because the tenant had "sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*" (see section 47(1)(i) of the Act).

The landlord alleges that the tenant has sublet the rental unit without the landlord's written consent on multiple occasions by having various people rent from the tenant. The tenant acknowledges that she has had various roommates but argued that at no time did she sublet the rental unit or vacate the rental unit.

At this point we must turn to the *Residential Tenancy Policy Guideline 19: Assignment and Sublet* (version dated December 2017) for interpreting what is considered a sublet

versus a roommate type arrangement between the parties. The following passage on pages 5 and 6 of the guideline is of particular relevance:

> 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.* [. . .] 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.

In this dispute, the landlord did not prove that the individuals to whom the tenant rented out bedrooms in fact leased out the entire rental unit. In fact, the very fact – as provided in the landlord's and the landlord's witness' testimonies – that there were people coming and going, in many cases for a few months, strongly supports the tenant's position that she never gave up residency or occupancy of the rental unit. That the tenant may have flown to a warmer climate for several months does not, I find, mean that she vacated or abandoned the rental unit, thereby causing a sublet to occur.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the third ground on which the Notice was given. Quite simply, the tenant's multiple renting out of rooms to various roommates does not meet the definition of "sublet" for the purposes of the Act.

For these reasons, having not proven the grounds on which the Notice was given, the Notice is hereby ordered cancelled effective immediately. The Notice is of no legal force or effect and the tenancy shall continue until it is ended in accordance with the Act.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the tenant succeeded in her application, I award her $100.00 in compensation to cover the cost of the application filing fee.

Therefore, pursuant to section 72(2) of the Act, the tenant is ordered to make a one-time deduction of $100.00 from a future rent payment of her choosing.

Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant's application is granted.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: October 18, 2021

Residential Tenancy Branch