



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was scheduled to deal with a tenant's application to dispute a One Month Notice to End Tenancy for Cause ("One Month Notice").

A person (referred to by initials SD) appeared and was affirmed. There was no appearance by the tenant. There was no appearance by anybody for the landlord.

SD stated that she was appearing on behalf of the tenant and provided affirmed testimony that she was asked by the tenant to appear at the hearing to represent him. It also appeared as though SD had filed the Application for Dispute Resolution. SD confirmed that to be accurate and stated that the tenant is currently in another country and his return date is unknown at this time.

I informed SD that I would require proof that the tenant had authorized her to file the Application for Dispute Resolution to dispute the One Month Notice and to represent him at this hearing, especially considering the reason for ending the tenancy, as stated on the One Month Notice, was because the tenant had sublet the rental unit or assigned the tenancy without consent of the landlord.

Rule 6.8 of the Rules of Procedure provide:

6.8 Proof of authority to act

The arbitrator may require an agent to provide proof of their appointment to represent a party and may adjourn a dispute resolution hearing for this purpose.

I informed SD that I would require a document indicating that the tenant authorized SD to file the Application for Dispute Resolution and to represent him at the hearing that

included the tenant's signature. I cautioned SD that if the authorization is fraudulent the action would be subject to the consequences of perjury. SD indicated she understood. A deadline of December 13, 2021 was set for the tenant to provide proof of authorization for SD to represent him in this matter. I continued to hear the matter, with caution that the outcome of the hearing would depend upon receiving sufficient proof of authority to act.

A document dated December 10, 2021 was uploaded and it appears to be authorization for SD to represent the tenant. The document contains a signature purportedly of the tenant; however, I am unable to verify the signature as there was no tenancy agreement or other documentation that contains the tenant's known signature provided for my review. On its face value I accept the authorization letter dated December 10, 2021 is sufficient to demonstrate SD is authorized to represent the tenant; however, I have copied the authorization letter below the cover page of this decision in the event the landlord seeks to compare the signature to another document signed by the tenant.

As for proof of service of the hearing materials upon the landlord, SD testified the package was sent to the landlord on August 24, 2021 and delivered on August 25, 2021. SD provided a registered mail receipt, including tracking number, as proof of service. The address for service is the same as the landlord's service address appearing on the One Month Notice. Accordingly, I was satisfied the landlord was duly served with notification of the hearing and I continue to make a decision in this matter.

Issue(s) to be Decided

1. Should the One Month Notice be upheld or cancelled?
2. Award of the filing fee.

Background and Evidence

I was not provided any particulars concerning the terms of tenancy.

I was provided a copy of a One Month Notice to End Tenancy for Cause dated August 3, 2021 with a stated effective date of September 3, 2021. The reason for ending the tenancy, as stated on the One Month Notice is that the: *"Tenant has assigned or sublet the rental unit without the landlord's written consent"*

In the Details of Cause, the landlord wrote:

Details of Causes(s): 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.

Details of the Event(s):

the Tenant has sublet or rented the unit [REDACTED]ve. that is not permitted and no consent from the land lord.

[Rental unit address obscured by me for privacy purposes]

At the hearing, SD testified that the tenant's personal possessions remain in the rental unit and the tenant has not sublet the rental unit or assigned the tenancy agreement.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy that complies with the form and content requires of the Act and the tenancy should end for the reason(s) indicated on the notice. Rule 6.6 of the Rules of Procedure, provides as follows (with my emphasis underlined).

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the landlord did not appear at the hearing or otherwise present any evidence in support of its position that the tenancy should end for the reason(s) stated on the One Month Notice and the tenant's agent denied the tenant has assigned or sublet the rental unit. Therefore, I find the landlord has not met its burden of proof and I cancel the One Month Notice with the effect the tenancy continues at this time.

As the tenant was successful in this application, I award the tenant recovery of the \$100.00 filing fee paid for this application. The tenant is authorized to reduce a

subsequent month's rent in satisfaction of this award and in doing so the landlord must consider the rent paid in full.

Conclusion

The One Month Notice dated August 3, 2021 is cancelled and the tenancy continues at this time.

The tenant is awarded recovery of the filing fee and is authorized to deduct \$100.00 from a subsequent month's rent to satisfy this award. In doing so, the landlord must consider the rent to be paid in full.

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: December 14, 2021

Residential Tenancy Branch