



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 convened by way of conference call concerning an application made by the tenant seeking an order cancelling a One Month Notice to End Tenancy for Cause or End of Employment, and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The tenant also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness.

The landlord submitted that all evidence has been exchanged, and the tenant did not dispute that. Therefore, all evidence provided by the parties has been reviewed, and the evidence that I found relevant to the application is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause or End of Employment was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord (MFM) testified that this tenancy began on November 1, 2021 with no written tenancy agreement. The rental unit is not owned by the landlord, but rented from another person. The tenant in this matter paid rent in the amount of \$850.00 per month, and the landlord pays the owner \$650.00 per month. Rent is due on the 1st day of each month, and the tenant has been paying rent directly to the owner since February, 2022.

The rental unit is a single family dwelling, and no security deposit or pet damage deposit were collected from the tenant, and no move-in condition inspection report was completed. At the time, the landlord did not see it as a sub-let, just providing a home for the tenant to stay in while working for the landlord. The rental unit has been the landlord's family home for 28 years.

The landlord further testified that on March 1, 2022 the landlord served the tenant with a One Month Notice to End Tenancy for Cause or End of Employment (the notice) by personally handing it to the tenant. A copy has been provided by the tenant for this hearing and it is dated March 1, 2022 and contains an effective date of vacancy of March 31, 2022. The reason for issuing it states: Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.

The parties had a verbal agreement that the landlord would provide affordable housing to the tenant in order for the tenant to help the landlord with the landlord's bookkeeping business, but employment never started. The tenant kept giving reasons that she couldn't start. The landlord was understanding at first, but the list of reasons for not starting employment got longer and longer, and eventually told the landlord that she wasn't going to work and never really intended to work for the landlord, but wanted the house.

The landlord has been given a notice to end the tenancy from the owner for failing to get the owner's permission to sublet, with whom the landlord had a casual relationship. The owner has been an absentee landlord, and is getting more rent from the tenant than what the owner was charging the landlord. The landlord disputed the Notice and a hearing is scheduled for August, 2022.

The landlord is currently residing in a house purchased by her mother, in hopes that the landlord will purchase it or inherit it.

The tenant testified that when the parties met, the landlord told the tenant that she had purchased a house and was moving out of the house she was renting. The tenant was in the community on vacation and was thinking of moving there. The landlord said that the house was available and if the tenant wanted it, she could rent it.

The tenant had to look into the job situation and told the landlord about her employment history. The landlord said she was looking for a part time employee. However, the tenant rented the house prior to deciding to work for the landlord; it was not a package deal.

When the tenant arrived, the landlord said she had a lot of regret and should have had a family member rent it. The tenant paid \$10,000.00 to have her belongings moved from Toronto. Then a couple of weeks later, the landlord said that she regretted renting the garage.

The tenant told the landlord that she could work on November 18, however a couple of days later the landlord said that a computer was being repaired, then on December 14, 2021 the landlord advised that the computer was running, but the landlord's computer was being repaired. The landlord did not say that the tenant's work station was up and running as mentioned in the landlord's evidentiary material. At no time did the landlord advise the tenant that the landlord was ready for the tenant to start work. The tenant was available for work for over a month. By December 21, 2021 the tenant realized that employment was not going to happen.

There is no reason to end the tenancy. The tenant has been paying rent. Once the landlord told the tenant that the landlord wanted the tenant to move out, the tenant panicked and once receiving the Notice, the tenant contacted the owner. The owner did not know that the landlord had moved out, and had not paid rent for 4 years and was not forwarding any rent to the owner since the tenant moved in. Because the landlord had sublet without permission and had not told the landlord that she had moved out, that gave the owner the right to evict the landlord and the tenant, unless the tenant negotiated a new tenancy agreement with the owner. A new tenancy agreement was signed, and a copy has been provided for this hearing. It names the owner as landlord and the tenant as the tenant. The tenancy commences on February 1, 2022 and reverts to a month-to-month tenancy after June 1, 2022, for rent in the amount of \$850.00, payable on the 1st day of each month, with no security deposit and no pet damage deposit payable.

The tenant's witness is the owner of the rental home and testified that a lease has been signed by the witness and the tenant. The landlord sent rent to the owner in a lump sum in February, 2022, but not prior. The landlord did not pay any rent from January 1, 2018 until February, 2022.

The witness was not aware that the landlord, who was the owner's tenant, had moved out until hearing from the tenant at the end of December, 2021. The witness is content with the tenant remaining in the rental unit, and has been paying rent to the witness since February 1, 2022.

The witness gave a notice to end the tenancy with the landlord and a hearing is scheduled for August. The witness has only been receiving rent from the tenant since February 1,

2022, and the witness acknowledges that the landlord and the tenant paid rent for February, and part should be returned to the landlord.

The landlord moved out in October, 2021 and didn't pay any rent or tell the witness that she was moving out. The tenant called the witness saying she was being evicted and asked the witness about her feelings. By the time the witness started to collect rent from the tenant, the landlord hadn't been living there for several months.

The witness gave the landlord a notice to end that tenancy because the witness wanted the landlord's possessions removed from the garage so that the tenant could have access to it.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the Notice, and I find that it is in the approved form. The reason for issuing it is in dispute.

I have reviewed all of the evidentiary material, and there is no agreement that the rental unit was only available to the tenant during a term of employment. Therefore, I am not satisfied that the landlord has established that the Notice was given in accordance with the *Act*, or that any employment arrangement included rental of the home.

The Notice is cancelled.

I make no findings of fact or law with respect to the landlord/tenant relationship between the landlord in this matter and the owner. That will be dealt with at the hearing in August.

The tenant has applied for an order that the tenant recover the filing fee from the landlord, however the record shows that the tenant did not pay a filing fee, and I dismiss that portion of the tenant's application.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause or End of Employment dated March 1, 2022 is hereby cancelled.

The tenant's application for recovery of the filing fee is hereby 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: June 21, 2022

Residential Tenancy Branch