



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, DRI

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on February 24, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated February 23, 2022 (the “Notice”)
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To dispute a rent increase that is above the amount allowed by law

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Landlord provided their full legal name and the full address of the rental unit, both of which are reflected on the front page of this decision.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset that I would consider the dispute of the Notice and dismiss the remaining requests as they are not sufficiently related to the dispute of the Notice. The remaining requests 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.

The Landlord confirmed receipt of the hearing package.

The Landlord testified that they did not receive the Tenant's evidence. The Tenant testified that they sent their evidence to the Landlord by email; however, the Tenant had not submitted a copy of the email as evidence.

In the absence of further evidence, I was not satisfied the Tenant served their evidence on the Landlord as required by rule 3.14 of the Rules. Pursuant to rule 3.17 of the Rules, I heard the parties on whether the Tenant's evidence should be admitted or excluded. The Landlord sought exclusion of the evidence and the Tenant sought admission of the evidence. Pursuant to rule 3.17 of the Rules, I excluded the Tenant's evidence because I found it would be unfair to the Landlord for me to consider it when the Landlord had not seen it and could not respond to it at the hearing.

The Tenant confirmed receipt of the Landlord's evidence and confirmed there were no issues with service.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I have only referred 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?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started January 01, 2019. Rent is \$1,100.00 per month due on the first day of each month. Term nine of the agreement states that the Tenant may assign or sublet the rental unit with the written consent of the Landlord.

The Notice was submitted. The Notice is addressed to the Tenant. The Notice refers to the rental unit. The Notice is signed and dated by the Landlord. The Notice has an effective date of March 31, 2022. The grounds for the Notice are that the Tenant has

assigned or sublet the rental unit without the Landlord's written consent. The Tenant did not take issue with the form or content of the Notice.

The parties agreed the Notice was served, and received by the Tenant, February 23, 2022.

The Landlord took the position that the Tenant has sublet the rental unit to their mother and mother's partner without the Landlord's consent. The main issue between the parties is whether the Tenant still lives in the rental unit.

The Landlord submitted that the Tenant moved out of the rental unit in September of 2019 and is living in a different province. The Landlord testified that the Tenant is also working in the other province. The Landlord submitted that the Tenant is falsely claiming that they still reside in the rental unit. The Landlord pointed out that the Tenant's address for service on the Application is in the other province. The Landlord testified that the Tenant's phone number is from the other province. The Landlord testified that they have attended the rental unit and the Tenant has not been there.

The Landlord provided written submissions and documentary evidence. In the written submissions, the Landlord states that rent payments started coming from a different source in September of 2019. The Landlord submitted text messages, emails, a letter dated May 15, 2022 from a repair person and the Tenant's online resume.

The Landlord sought an Order of Possession effective two days after service on the Tenant.

The Tenant testified that their job is located in the other province; however, they work from home and work from the rental unit. The Tenant testified that they have been at the rental unit since September of 2019. The Tenant testified that they are required to drive throughout the other province as part of their work and therefore are sometimes in the other province and sometimes at the rental unit, but mostly at the rental unit. The Tenant acknowledged their mother has lived in the rental unit for one year.

The parties agreed the rental unit is a one-bedroom unit. The Tenant testified that they live in the rental unit with their mother but not their mother's partner. The Tenant testified that their mother's partner only stays over at the rental unit sometimes to help their mother out.

I asked the Tenant about their address for service on the Application and the Tenant testified that the address is their friend's place which they stay at when they are not at the rental unit.

Analysis

The Notice was issued pursuant to section 47 of the *Act* and the following subsection:

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 [assignment and subletting]...

Section 34 of the *Act* states:

34 (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit...

RTB Policy Guideline 19 addresses subletting and states in part:

C. SUBLETTING

Sublets as contemplated by the Residential Tenancy Act

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...

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. 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.

The Tenant had 10 days to dispute the Notice pursuant to section 47(4) of the *Act*. I accept that the Tenant received the Notice February 23, 2022, based on the testimony of the parties. The Application was filed February 24, 2022, within time.

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

There is no issue that the Tenant's mother is living in the rental unit because the parties agreed on this. I find the issue to be whether the Tenant has moved out of the rental unit. If the Tenant has moved out of the rental unit, I am satisfied the Tenant has sublet the rental unit to their mother. If the Tenant has not moved out of the rental unit, the Tenant has not sublet the rental unit. Further, there is no issue that the Tenant has not obtained consent to sublet the rental unit because the Tenant did not take this position on the Application.

I find there is some support for the Landlord's position in the text messages based on the following. The Tenant notes they are not home, and their mother or stepdad are at the rental unit when the Landlord asked about doing repairs in May. The text messages show the Tenant is not at the rental unit when the repair person needs to enter in June. The text messages show the Tenant's mother is at the rental unit later in June when the Landlord and repair person attend. The Tenant states they are out of town working January 24th. The text messages show the Tenant is not available for an inspection of the rental unit when the Landlord is at the building despite the Tenant indicating they are at home and asking the Landlord when they would like to do the inspection.

I also find there is some support for the Landlord's position in the May 15, 2022 letter from a trades person who attended the rental unit because they state they observed a male and female living in the rental unit.

I find the circumstances as a whole support the Landlord's position that the Tenant is not living at the rental unit including the following. The Tenant's address for service on the Application is in another province. I find it unlikely that the Tenant would use someone else's address as an address for service in a legal proceeding unless the Tenant was at that address most of the time. I accept that the Tenant's phone number as noted on the Application has an area code from another province which supports the Landlord's position that the Tenant lives in another province. The Tenant acknowledged their job is located in the other province and testified that they have to drive around the other province as part of their work. I find it unlikely that the Tenant is living in the rental unit and travelling to and around the other province for work. I find it unlikely that the Tenant and their mother both live at the rental unit, that the Tenant also works out of the rental unit and that the Tenant's mother's partner also stays at the rental unit sometimes when the rental unit is a one-bedroom unit.

When I consider all the circumstances combined with the text messages and May 15, 2022 letter, I am satisfied the Landlord has proven on a balance of probabilities that the

Tenant is not living at the rental unit. Given this, I am satisfied the Tenant has purported to sublet the rental unit without first obtaining the Landlord's written consent as required. Therefore, I am satisfied the Landlord had grounds to issue the Notice.

I have reviewed the Notice and find it complies with section 52 of the *Act* as required by section 47(3) of the *Act*.

Given the above, I dismiss the dispute of the Notice without leave to re-apply and uphold the Notice.

Section 55(1) of the *Act* requires an arbitrator to issue a landlord an order of possession when a tenant disputes a notice to end tenancy, the dispute is dismissed or the notice is upheld and the notice complies with section 52 of the *Act*.

I have dismissed the dispute of the Notice and upheld the Notice. I have found the Notice complies with section 52 of the *Act*. Therefore, pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession effective two days after service on the Tenant.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

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: June 14, 2022

Residential Tenancy Branch