



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OCEAN BAY HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, OLC, MNDCT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;

An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and

A monetary order for damages or compensation pursuant section 67.

The tenant attended the hearing, and the landlord was represented at the hearing by counsel, KN and resident manager, CS (“landlord”). As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant’s Notice of Dispute Resolution Proceedings package and the tenant acknowledged service of the landlord’s evidence. Neither party took issue with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (“Rules”) and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Should the notice to end tenancy be upheld or cancelled?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Should the landlord be ordered to compensate the tenant?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The tenant was originally roommates living with another tenant in the rental unit next door. When this unit became available, the tenant took it to live alone.

At Christmas, 2021, the tenant advised the landlord that he was taking a vacation and that his friend would be staying in the rental unit while he was gone. The landlord acknowledged this and consented to the friend staying while the tenant was on vacation. In March 2022, another tenant living on the same floor as the tenant advised the landlord that the tenant's friend is the tenant's boyfriend and that he is living in the unit with the tenant. The landlord went to the tenant's unit, confronted the tenant, and told the tenant that having additional occupants costs \$100.00 more per month as stated in the tenancy agreement. No copy of the tenancy agreement was provided for this hearing; however, the tenant agrees that the clause exists. In accordance with the clause, the tenant gave the landlord \$200.00, representing February and March 2022 for the additional occupant being there. The landlord testified that she gave the tenant an application to determine whether the landlord would add the boyfriend to the lease. The landlord testified that the boyfriend was declined, due to a poor credit rating and lack of funds. The landlord did not supply the completed application form or the results of the vetting process for this hearing.

On March 23, 2022, the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause and both parties provided a copy of it for the hearing. The notice gives a single reason for ending the tenancy: *tenant has assigned or sublet the rental unit/site without landlord's written consent.*

The tenant gave the following testimony. He acknowledges being served with the notice to end tenancy on March 23rd. The landlord asked the boyfriend to fill out the

application to be added to the tenancy agreement in early March, then the landlord served him with the notice to end tenancy when she came back from a vacation. The landlord accepted the payments of \$100.00 for February and March, but the tenant hasn't paid any additional fees since being served with the notice to end tenancy.

The tenant argues that the landlord was aware of his boyfriend living with him, pointing to the landlord's testimony that she gave them the application to fill out and the fact that she named the boyfriend on the notice to end tenancy as well as himself. She accepted the payments for February and March, understanding that the fees were to pay for another person occupying the unit with him. The tenant testified that he is open to paying more for rent to have his boyfriend live with him.

Lastly, the tenant seeks an order that the landlord comply with the Act, regulations or tenancy agreement. In the application for dispute resolution, the tenant does not specify what part of the Act, regulations or tenancy agreement that the landlord is not complying with. The tenant gave testimony of the landlord not respecting his privacy by having a loud conversation with him in the hallway. The tenant states that he would like the landlord to not be rude in her dealings with him.

Analysis

The parties agree the tenant received the landlord's 1 Month Notice to End Tenancy for Cause on March 23, 2022. The tenant filed his application to dispute the notice six days later, on March 29, 2022 in accordance with section 47 of the Act.

Section 47 of the Act provides that upon receipt of a Notice to End Tenancy for Cause, the tenant may, within ten days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files the application, the landlord bears the burden to prove he or she has valid grounds to terminate the tenancy for cause. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice. In the matter at hand, the landlord must demonstrate:

the tenant has assigned or sublet the rental unit/site without landlord's written consent.

Residential Tenancy Branch Policy Guideline PG-19 [Assignment and Sublet] provides guidance to landlords and tenants regarding the issues likely to be relevant in disputes regarding situations where a tenant is alleged to have assigned or sublet their rental unit.

A. LEGISLATIVE FRAMEWORK

The *Residential Tenancy Act* (the Legislation) allow a tenant to assign their tenancy agreement and to sublet their rental unit. In most circumstances, unless the landlord consents in writing, a tenant must not assign or sublet (there are exceptions to this for manufactured home parks). A tenant who assigns their tenancy agreement, or sublets their rental unit, without obtaining the written consent of the landlord, may be served with a One Month Notice to End Tenancy (form RTB-33), pursuant to the Legislation.

B. ASSIGNMENT

Assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.

C. SUBLETTING (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.

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 landlord did not allege that the tenant ever moved out of the rental unit, replacing himself with his boyfriend as the tenant. The parties are in agreement that the tenant has always occupied the rental unit throughout the tenancy, with the exception of the

time at Christmas when he took a short vacation and had his boyfriend stay in the unit with the landlord's consent.

Given the above facts, I do not find the tenant has assigned or sublet the rental unit. The rights and obligations of the tenant have remained intact since the commencement of the tenancy; the tenant has not transferred his right and obligations to any other party (including his boyfriend). The tenant has obtained a roommate, which is not a sufficient cause for ending the tenancy under section 47(1)(i). Consequently, I find the reasons for ending the tenancy invalid and the notice to end tenancy is cancelled. The tenancy shall continue until it is ended in accordance with the Act.

The parties are in agreement that the tenancy agreement contains a clause where the tenant is to increase his rent payments by \$100.00 for the additional occupant. I accept that the tenant paid the \$100.00 for the months of February and March for the additional occupant living in the unit and I dismiss his claim to have the \$200.00 returned to him. I make no order requiring that the tenant compensate the landlord with \$100.00 per month from April onward, but I would expect that the parties would come to an agreement that those payments be made.

The landlord testified that the tenant's boyfriend's application to be added to the tenancy was not approved due to financial instability however the tenant testified that he is fully capable of paying the additional \$100.00 per month as required under the tenancy agreement. I will leave it to the parties to determine whether the status of the tenant's boyfriend will remain as an occupant/roommate or if they want to either amend the tenancy agreement to add him as a tenant or draft a new tenancy agreement with both of them as tenants.

Lastly, the tenant seeks an order that the landlord comply with the Act, regulations or tenancy agreement by a) not being rude towards him and b) not divulge personal and private information by speaking loudly in common areas of the building. I find the tenant has provided insufficient evidence to support an allegation that the landlord was not compliant with the Act, regulations or tenancy agreement and I dismiss this portion of his application without leave to reapply.

Conclusion

The notice to end tenancy is cancelled and of no further force or effect. The tenancy shall continue until it is ended in accordance with the Act.

The remainder 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 29, 2022

Residential Tenancy Branch