



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes

Introduction CNC, OLC, FF

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on March 23, 2022, to have the landlord comply with the Act and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Should the landlord be ordered to comply with the Act?

Background and Evidence

The tenancy began on February 1, 1994. Rent in the amount of \$650.00 was payable on the first of each month. Rent has not been increased during this tenancy.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on May 1, 2022.

The reason stated in the Notice was that the tenant has:

- Tenant has assigned or sublet the rental unit without landlord’s written consent.

The landlord testified that they had discovered that the tenant had moved out of the rental unit on October 15, 2021 and had subleased the rental unit to another person for a higher rent only after a dispute between them occurred. The landlord stated that the tenant did not ask permission to sublet the rental unit and did not have their written consent.

The tenant testified that they did not believe they were subletting the premises as they believed they were providing temporary housing to an employee, which they charged \$850.00 per month rent to cover their expenses. The tenant stated they did vacate the rental unit and removed their belongings storing them in the garage. The tenant stated that they did not ask the landlord permission and did not enter into a sublease agreement with the subtenant.

The tenant submits into evidence a copy of a decision dated June 21, 2022, where the tenant acting as the landlord issued a One Month Notice to End Tenancy for End of Employment, to the subtenant. The Arbitrator found that there was no agreement that the rental unit was only available to the tenant/subtenant during a term of employment.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has assigned or sublet the rental unit without landlord's written consent..

In this case the tenant vacated the rental unit on October 15, 2021 and rented the premises to another person. The tenant acknowledged that they did not ask permission of the landlord and did not have the landlord's written consent to sublet the premises. I find the tenant has breached section 34 of the Act. I find the Notice, has been proven by the landlord and is valid and enforceable. I find the tenancy legally ended. Therefore, I dismiss the tenant's application to cancel the Notice.

As I have dismissed the tenant's application, I find I must grant the landlord an order of possession pursuant to section 55 of the Act.

In this case, the tenant was on a month-to-month tenancy agreement and did not enter into a sublease agreement with the subtenant. A sublease agreement must in writing

and for a shorter period of time even by one day, in order to preserve their tenancy. The tenant did not enter into any written agreement or any kind with the subtenant and did not preserve their interest in the tenancy. The subtenant and the landlord have negotiated a new tenancy and that tenancy is ongoing.

As the tenant has no interest remaining and the subtenant has negotiated a tenancy agreement with the landlord and will remain living in the rental unit. I find it appropriate to grant the landlord an Immediate Order of Possession, I find this is not prejudicial to the tenant as they have not lived on the property since October 15, 2021.

However, as the tenant has stored personal property in the garage. The parties at the hearing agreed that any items the tenant has stored will be removed within the next 30 days.

Conclusion

The tenant's application is dismissed. The tenant is not entitled to recover the cost of the filing fee from the landlord. The landlord is granted an order of possession.

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: August 03, 2022

Residential Tenancy Branch