



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMERICA ASIA TRAVEL AGENCY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant and an agent for the landlord (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this decision and order.

Preliminary Issue- Service

The tenant testified that she served the landlord with her application for dispute resolution and some evidence via email on May 19, 2022. The agent testified that the above documents were received by the landlord on or around May 19, 2022. I find that the above documents were sufficiently served on the landlord for the purposes of this *Act*, in accordance with section 71 of the *Act*, because receipt was confirmed.

The tenant testified that additional evidence was served on the landlord via email on August 17, 2022. The agent testified that the landlord received the above documents on or around August 17, 2022. I find that the above documents were sufficiently served on the landlord for the purposes of this *Act*, in accordance with section 71 of the *Act*, because receipt was confirmed.

The agent testified that the landlord's evidence was served on the tenant via registered mail on August 17, 2022. The tenant testified that she received the landlord's evidence on August 17, 2022. I find that the landlord's evidence was served on the tenant in accordance with section 88 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. The tenant moved into the subject rental property with a co-tenant in 2012 and signed a new tenancy agreement with the landlord in 2013 in which she is the sole tenant. Monthly rent in the amount of \$1,360.21 is payable on the first day of each month. A security deposit of \$590.00 was

paid by the tenant to the landlord. The 2013 written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on April 27, 2022 she served the tenant with a One Month Notice to End Tenancy for Cause with an effective date of May 31, 2022 (the "One Month Notice") via registered mail and email. The tenant confirmed receipt of the One Month Notice on April 27, 2022 via email. The tenant filed to dispute the One Month Notice on May 5, 2022.

The One Month Notice was entered into evidence and states the following reason for ending the tenancy:

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

Both parties agree that the subject rental property is a two-bedroom unit. The agent testified that the tenant rented out one of the rooms in the subject rental property without obtaining the landlord's written consent. The agent testified that she does not know if the tenant resided in the subject rental property at the same time as the person who rented the room from the tenant.

The tenant testified that she did not sublet the subject rental property but did rent out one of the rooms in the subject rental property to a roommate for the month of March 2022. The tenant testified that at all times she resided in the subject rental property and never gave exclusive possession of the subject rental property to her roommate.

The agent entered into evidence a room rental agreement between the tenant and the roommate. The room rental agreement states:

- This is a legally binding agreement. It is intended to promote household harmony by clarifying the expectations and responsibilities of the principal tenant [the tenant] and the roommate.
- Length of Agreement: March 1st through March 31st, 1:00 pm, 2022

Analysis

Section 47(1)(i) of the *Act* states:

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*];

Residential Tenancy Branch Policy Guideline #19 (PG#19) states:

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....

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 subtenant 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 subtenant....

As stated above within section C, unless the tenant is acting as an agent for the landlord or has moved out of the unit, this is not a true sublet under the RTA. It is unlikely that a One Month Notice to End Tenancy (form RTB-33) for cause for the tenant's failure to obtain the landlord's written consent to sublet would be successful in these circumstances, although this type of action by a tenant may constitute other breaches of the Act or tenancy agreement for which the landlord might issue a One Month Notice to End Tenancy (form RTB-33).

[Emphasis added]

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

Based on the testimony of both parties, I find that the landlord has not proved, on a balance of probabilities, that the tenant vacated the subject rental property and sublet it to another person. Based on the testimony of the tenant and the room rental agreement entered into evidence, I find that the tenant obtained a roommate, and the tenant and the roommate resided in the same rental unit for the month of March 2022. As stated in PG #19, because the tenant did not move out, this is not a true sublet or an assignment and is therefore not grounds for eviction under section 47(1)(i) of the *Act*.

As the tenant did not sublet the subject rental property as alleged in the One Month Notice, I find that the One Month Notice is cancelled and of no force or effect. This tenancy will continue in accordance with the *Act*.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

Conclusion

The One Month Notice is cancelled and of no force or effect.

The tenant is entitled to deduct \$100.00 from rent on one occasion.

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: September 09, 2022

Residential Tenancy Branch