



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARNI ENTERPRISE LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on August 3, 2022 (the "Application"). The Tenant applied to obtain an order cancelling a One Month Notice to End Tenancy for Cause, dated July 30, 2022 (the "One Month Notice"), pursuant to the *Act*.

The Tenant, the Tenant's Advocate K.D., and the Landlord P.P. attended the hearing at the appointed date and time. At the start of the hearing, the Landlord confirmed receipt of the Tenant's Application and documentary evidence. As there were no issues raised, I find these documents were sufficiently served pursuant to Section 71 of the *Act*. The Landlord confirmed that he did not provide any documentary evidence in response to the Tenant's Application.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling One Month Notice, pursuant to Section 47 of the *Act*?
2. If the Tenant is not successful in cancelling the One Month Notice, is the Landlord entitled to an order of possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on January 20, 2022. The Tenant is required to pay rent in the amount of \$1,250.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$625.00 which the Landlord continues to hold. The Tenant continues to occupy the rental unit. A tenancy agreement was provided in support.

The Landlord stated that he served the Tenant in person with the One Month Notice on July 30, 2022 with an effective vacancy date of August 30, 2022. The Tenant confirmed having received the One Month Notice on July 30, 2022. The Landlord's reasons for ending the tenancy on the One Month Notice are;

"The Tenant has allowed an unreasonable number of occupants in the unit."

"The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health and safety or lawful right of another occupant or the landlord, and put the landlord's property at significant risk."

"Tenant has assigned or sublet the rental unit without the landlord's written consent."

The Landlord stated that there have been ongoing concerns regarding the Tenant having guests live with her in the rental unit. The Landlord stated that he conducts monthly inspections of the rental unit and often finds the Tenant's guests in the unit. The Landlord stated that the rental unit is dirty and cluttered, citing that there is laundry placed along side the hot water tank which poses a safety risk. The Landlord stated that he has warned the Tenant verbally on several occasions. Lastly, the Landlord stated that the Police have attended the rental unit on several occasions, and most recently Police have removed the Tenant's guests.

The Tenant responded by stating that she had a guest stay for one week only and that they have since left the rental unit. The Tenant denies that the Landlord has provided

her with any warnings. Lastly, the Tenant stated that she was employed by the Police to make dream catchers and that the Police attended her unit to pick up some inventory.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause on July 30, 2022. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

The Landlord stated that the Tenant has allowed an unreasonable number of occupants in the unit. The Tenant stated that she only had one guest who stayed for one week. I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant has an unreasonable number of occupants in her rental unit.

The Landlord is stating that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health and safety or lawful right of another occupant or the landlord, and put the landlord's property at significant risk. During the hearing, the Landlord stated that the Tenant's rental unit is dirty and that there are clothes up against the hot water tank. Furthermore, the Police have attended the rental unit on several occasions.

I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant's rental unit is in such poor condition to the extent that the tenancy should end. I find that the Landlord did not provide any details as to when the Police attended the rental unit, and for what purpose. While the Landlord stated that he provided the Tenant with warnings, I find that the Landlord did not provide any evidence to support that previous warnings have been issued to the Tenant by the Landlord.

Lastly, the Landlord stated that the Tenant has assigned or sublet the rental unit. According to the Policy Guideline 19;

“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 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.”

In this case, I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant has assigned or sublet the rental unit as described above.

In light of the above, I cancel the One Month Notice, dated July 30, 2022. I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenant’s application is successful. The One Month Notice issued by the Landlord dated July 30, 2022 is cancelled. The tenancy will continue until ended in accordance with the Act.

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 20, 2022

Residential Tenancy Branch