



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

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

- cancellation of a One Month Notice to End Tenancy For Cause (the "One Month Notice"), pursuant to section 47
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The tenant's application was filed within the time period required under the Act.

Preliminary Issue – Naming of parties and Scope of Application

The tenant's application named a person R.P. as a co-tenant. However, R.P. is not on the lease and there was no evidence that a new lease was entered into to include R.P.; therefore I have amended this application to remove R.P. as a party.

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, during the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy originally began on September 1, 2020 for a one year fixed term. The lease was renewed for another one year fixed term beginning September 1, 2021 and was set to expire on August 31, 2022. The lease requires that the tenancy will end at the end of this term and the tenants must vacate the unit as the landlord or a close family member of the landlord intends to occupy the unit. The monthly rent is \$3300.00 payable on the 1st day of each month. The tenants paid a security deposit of \$1650.00 at the start of the tenancy.

The three tenants named in this application were party to the signed lease agreement as co-tenants. The lease also named an additional co-tenant K.L. On January 20, 2022, K.L. e-mailed the landlord and the other co-tenants advising she needed to move-out and that the other co-tenants would be looking for a roommate to replace her on the lease. On this same date the landlord responded to K.L. stating "if they can find a roommate until end of Feb, if not they will decide how they can pay amount of \$3300.00 until they find a roommate.

The landlord served each of the tenants with separate One Month Notices on July 22, 2022. The One Month Notices originally had an incorrect effective date of August 1, 2022 but then were reserved with a new effective date of September 1, 2022. The One Month Notices were issued on the following grounds:

- the tenant or a person permitted on the residential property by the tenant has:
 - put the landlord's property at significant risk;

- the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
- 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*];

The landlord claims the tenants assigned or sublet the unit without permission after the tenant K.L. advised she would be vacating before the end of the fixed term agreement. The landlord claims she only originally agreed to the sublet to mitigate losses as there was more than 6 months left in the fixed term. The landlord testified that the tenants are not taking care of the house as there is lots of clutter and the gardening is not being done as per the lease requirements. The landlord submits the property was at risk because the washing machine had displaced about 12" from the wall and near the dryer which operates on gas causing a risk hazard.

S.S. represented the tenants in this hearing. S.S. testified that they have not assigned or sublet the unit as they are still residing in the unit themselves. S.S. testified that they have just got a new roommate which the landlord did not object to as long as the rent was paid. S.S. testified that the garden maintenance is not clearly defined in the lease and that the tenants do take care of regular yard maintenance.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

First, I find that when the tenant K.L. issued a notice to vacate, the landlord could have treated this as the end of the tenancy for all the co-tenants. However, the landlord did not but rather agreed that the remaining tenants could try to find another roommate so long as they were able to continue paying the rent. Accordingly, I find that the remaining tenants and the landlord implicitly entered into a new tenancy agreement on the same terms as the previous lease. I further find that R.P. was not a party to this

agreement as a new lease was not formally drawn up and R.P. is only a roommate. As such, I find the tenants have not assigned or sublet the rental unit.

Secondly, I find the landlord has submitted insufficient evidence that the tenants have put the landlord's property at significant risk. The landlord failed to show how the lack of maintenance, cleanliness or displaced washing machine have put the property at significant risk.

Lastly, I find there is no evidence that the tenants were ever notified that they were in breach of a material term of the tenancy with respect to cleanliness and/or maintenance concerns and given an opportunity to correct the breach within a reasonable period after being given written notice to do so.

Accordingly, I find the landlord presented insufficient evidence to justify that she had cause to issue the One Month Notice on either of the grounds indicated.

Further, I note that I find it curious that the landlord would issue a One Month Notice which would not have been effective until the day after the fixed term lease was set to expire. Unless of course the landlord did not truly intend to occupy the unit as stated in the lease. The landlord was cautioned that requiring parties to enter into fixed term leases with a vacate clause for landlord use of property could have serious financial consequences if this intent is not acted upon.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application from the landlord. **The tenant may reduce a future rent payment in the amount of \$100.00.**

Conclusion

I allow the tenants application to cancel the landlord's One Month Notice, dated July 22, 2022, which is hereby cancelled and of no force or effect. This tenancy continues until it is 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 13, 2022

Residential Tenancy Branch