



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On August 25, 2022, the tenants filed for an order to cancel a One Month Notice to End Tenancy for Cause, dated August 23, 2022 (the One Month Notice).

Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Issues to be Decided

- 1) Are the tenants entitled to an order cancelling the One Month Notice?
- 2) If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

Those present agreed on the following particulars regarding the tenancy. The current tenancy agreement began on March 1, 2021; rent is \$2,537.50, due on the first of the month; and the tenants paid a security deposit of \$1,250.00 and a pet damage deposit of \$625.00, which the landlord still holds.

The parties agreed that what is being rented is a house with multiple bedrooms and a garage that has been converted into a living space with its own kitchen and bathroom. The parties did not agree on the number of bedrooms in the home.

A copy of the tenancy agreement is submitted as evidence. It records the street address rented to the tenants, as noted on the cover page of the decision; there is no further unit information recorded in the tenancy agreement.

The landlord testified the One Month Notice was served on the tenants in person on August 24, 2022. RHM testified she thought the Notice was served and received on August 23, 2022.

A copy of the One Month Notice is submitted as evidence. It is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

The One Month Notice indicates the tenancy is ending because the tenant has assigned or sublet the rental unit/property without the landlord's written consent.

The Details of Causes section of the Notice states: "The tenant is renting out the garage as a bachelor suite without the landlord's consent."

The landlord testified that when advertising the house for rent, they had specified that the converted garage was for use by a tenant's children or in-laws, not as a separate unit. The landlord testified their house insurance has previously been cancelled because the house was seen to have two units.

The parties agree that tenant RHM moved out of the unit on April 30, 2021.

The landlord submitted that tenant RM has moved out of the country; has sublet the unit to RHM, who is no longer a tenant because she moved out; and that both are subletting the garage without the landlord's knowledge or consent. When I asked the landlord if there is anything in her submitted evidence to prove her position that RM has moved out of the house, the landlord testified there was no such documentation in her evidence.

The landlord testified that on March 10, 2022, she received a text from RM saying she would be living in another country for 6 months and asking if she may have friends live in the basement, which the landlord declined. The landlord testified that RM then asked

if her son could rent the garage from the landlord if RM “gave up” the house. The landlord testified she declined because her house insurance does not cover multiple units. The landlord testified RM said she would take a few shorter trips, rather than being away for 6 months.

RM testified that in her March text she stated she was thinking of going away for 6 months, not that she had made firm plans. In a March 10 text from RM to the landlord, submitted as evidence, RM stated: “I’m contemplating going down to [country] for 6 months”

The landlord testified that in August 2022 the tenants advertised the garage for rent online, calling it a self-contained bachelor unit. The landlord testified that at the end of August 2022 her husband knocked on the garage door, and was told by the person who answered (AN) that she had rented the garage from RM for a year.

RM testified she never acted as a landlord. RM testified that they always had a roommate, there was no mention of restrictions on the rental, and that the landlords did regular inspections and were around doing yard work.

Tenant RM testified that she is often out of the country, but still resides in the house, the utilities are in her name, and her children and belongings are in the home. The landlord agreed that RM’s belongings were still in the house.

Analysis

Section 47 of the Act permits a landlord to give a notice to end a tenancy for cause.

Based on the parties’ testimony, I find the landlord served the tenants the One Month Notice in person on August 23 or 24, 2022, in accordance with section 88 of the Act, and that the tenants received it the same day.

Section 47 of the Act states that a tenant receiving a One Month Notice may dispute it within 10 days after the date the tenant receives it. As the tenants applied to dispute the Notice on August 25, 2022, I find they met the 10-day deadline.

I find the One Month Notice meets the form and content requirements of section 52 of the Act because it is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

The reason indicated for the Notice is that the tenants have assigned or sublet the rental unit without the landlord's written consent, and in the Details section, the landlord stated that the tenant is renting out the garage as a bachelor suite without the landlords' consent.

The Act defines "sublease agreement" as follows:

"sublease agreement" means a tenancy agreement

(a) under which

(i) the tenant of a rental unit transfers the tenant's rights under the tenancy agreement to a subtenant for a period shorter than the term of the tenant's tenancy agreement, and

(ii) the subtenant agrees to vacate the rental unit at the end of the term of the sublease agreement, and

(b) that specifies the date on which the tenancy under the sublease agreement ends;

[Policy Guideline 19. Assignment and Sublet](#) provides clarification on subletting. It states: "the use of the word 'sublet' can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement. 'Sublet' has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the Act, this is not considered to be a sublet."

The parties agree that tenant RHM moved out of the unit. The landlord alleges that the remaining tenant, RM, has also moved out, but the landlord has submitted no evidence in support, and has stated that RM's belongings are still in the unit.

Based on the evidence before me, and considering section 44, I find that RM is still a tenant, and, though she may travel extensively, still resides in the rental unit.

Considering the Act's definition of "sublease agreement," and that RM remains a tenant, renting the entire house from the landlord, which includes the converted garage, I find she has not sublet by renting out a space in the house. This finding is supported by the following example from page 6 of Guideline 19:

Example: John returns from his stay overseas and moves back into his rental unit and the subletting agreement between himself and Susan ends. Susan needs more time to find somewhere else to move to and asks John if he will rent a portion of the unit for her exclusive possession until she is able to move. John, without getting the written consent of the landlord, agrees. The landlord finds out about this arrangement and issues John a One Month Notice to End Tenancy (form RTB-33) for John's failure to obtain the landlord's written consent to sublet. At a hearing, an arbitrator determines that since John remained in the rental unit and allowed Susan to stay as an occupant/roommate, this wasn't a sublet as contemplated by the Act. The notice to end tenancy is cancelled.

I find the landlord has failed to prove the grounds for the One Month Notice because they have not demonstrated that the tenants have sublet the unit without the landlord's written consent.

Therefore, I cancel the One Month Notice. The tenancy will continue until it is ended in accordance with the Act.

Conclusion

The One Month Notice is cancelled, and the tenancy will continue 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: January 24, 2023

Residential Tenancy Branch