



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Randall North Real Estate Services
Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FFT

Introduction

On October 8, 2022 the Tenant filed an Application for Dispute Resolution, to challenge the 10-Day Notice to End Tenancy for Unpaid Rent. They also applied for reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 9, 2023.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. Each party confirmed they received the documents served by the other. The Tenant served the Notice of this Dispute Resolution to the Landlord, as well as document evidence. The Landlord duly served their own evidence to the Tenant within required timelines.

At the outset, the parties confirmed that the issue of a notice to end tenancy was the Landlord’s service of a One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) on October 7, 2022. The Tenant incorrectly indicated a 10-Day Notice to End Tenancy for Unpaid Rent on their Application. I have amended the Application accordingly.

Issues to be Decided

Is the Tenant entitled to cancellation or withdrawal of the One-Month Notice issued by the Landlord on October 7, 2022?

Is the Landlord entitled to an order of possession pursuant to s. 55 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

In their evidence, the Tenant provided a copy of the tenancy agreement that they signed on August 31, 2018. The parties acknowledged the presence in the agreement of two clauses that may have relevance to this matter:

- para. 19, stating that “Any other person who, without the landlord’s written permission, occupies or resides in the rental unit or on the residential property for more than 14 cumulative days in a calendar year will be doing so contrary to this agreement.”
- para. 20, stating that: “The tenant may assign or sublet the rental unit to another person with the written consent of the landlord.”

The Landlord presented that they issued a written warning to the Tenant on July 29, 2022. The Tenant presented a copy of this letter in their evidence. In it, the Landlord states their knowledge about the Tenant “hosting an Airbnb and/or subletting the above-noted apartment unit you are renting.” They stated directly: “We are writing to inform you this is NOT allowed in this building.” As well: “Any previous permissions, either verbally or written are revoked.” The Landlord stated plainly that this was the only warning, and if the infraction continued it would be grounds to end the tenancy.

In the hearing the Landlord explained this letter was the result of complaints from two other building residents about this Tenant’s Airbnb activity. The Landlord also presented that they received a notice from the local municipality. Upon conferring with the owner of the rental unit, the Landlord wrote this letter to inform the Tenant of their infraction, with the owner being clear that such activity was not allowed.

According to the Landlord in the hearing, the Tenant stated to them they would not further engage in Airbnb or subletting at the rental unit. After this, the Landlord found an advertisement online for an Airbnb at the rental unit (as shown in the Landlord’s evidence), and the local municipality notified the Landlord about the same advertisement. This ad showed the rental unit as available December 16 – 19, 2022. The Landlord stated in the hearing that the listing/advertisement should have been “completely deleted.”

The Landlord submitted a copy of a more substantive advertisement, one showing the Tenant's given name, and details of the website's reservation function, showing December dates.

The Tenant in the hearing explained that the previous Landlord agent that was in place approved an Airbnb arrangement with this rental unit. They would use the Airbnb listing online system and then make sure to vet applicants before approving a guest's stay at the rental unit. They received the Landlord's July 29 letter and replied back to the Landlord to state they would not continue.

Regarding the online advertisement, the Tenant stated they "snoozed" this listing. Even though they changed this option for the ad, it reverted to go live again after a certain time period. This is the reason, in the Tenant's explanation, that the ad went back online as eventually observed by the Landlord. The Tenant realized the "snooze" feature was off.

In their evidence, the Tenant showed their confirmation that the listing was no longer available, with a single entry stating "unlisted – Guests can't book this listing or find it in search results."

In response, the Landlord noted that a previous caretaker who worked at the rental unit property had allowed for Airbnb previously. The owner did not receive information about the "snooze" feature in use until they received the Tenant's information for this hearing. The Landlord in the hearing confirmed that the owner still wished to proceed with ending this tenancy.

As a result of their finding the live advertisement for the rental unit on Airbnb after their July 29, 2022 letter, the Landlord issued the One-Month Notice on October 7, 2022, for a tenancy end date of November 30, 2022. On page 2 the Landlord indicated the reasons:

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

The details section on the second page provides more information:

Tenant has listed the unit on Airbnb. [The Landlord] had a phone conversation in the summer of 2022 advising that the tenant is no longer allowed to sublet this unit. The tenant promised that they would not do it again, as they would be living there full time going forward. They also confirmed this in an email dated August 2, 2022.

Analysis

The *Act* s. 47 provides various grounds for which a landlord may end a tenancy by issuing a One-Month Notice.

In this matter, the onus is on the Landlord to prove they have cause to end the tenancy.

The Landlord confined the issue to that of the Tenant subletting/assigning the rental unit without authority. There was no evidence of past infractions, *i.e.*, those that occurred prior to 2022. Moreover, the Landlord granted that a previous representative of the Landlord had authorized AirBnB. The Tenant confirmed they had arranged AirBnB in the rental unit prior to 2022; the record was not clear on what happened in the earlier part of 2022.

I find the issue here, more precisely, is that of the Landlord finding an online advertisement, asking the Tenant to remove it and ensure no more AirBnB activity continued, and then finding the ad still online. I find this is not a conclusion that the Tenant *actually* sublet or assigned the rental unit (as in an AirBnB arrangement) after being told that such activity was not allowed. I cannot conclude from the occurrence of the ad online (which the Tenant did not deny and explained technically) that the Tenant arranged for further AirBnB clients, and further that any clients actually stayed in the rental unit after the Landlord ordered the Tenant to cease that activity.

Stated thus, the ground listed on page 2 of the One-Month Notice – “Tenant has assigned or sublet the rental unit . . . without landlord’s written consent” – did not actually occur. There was no actual assignment or sublet or AirBnB arrangement that occurred. The presence of the ad does not prove the existence of AirBnB activity having occurred.

As far as the Tenant keeping the ad online, I find this does not constitute grounds for ending the tenancy in itself, minus any subletting/assignment activity proven after the Landlord’s warning. I find the Tenant explained the advertisement still appearing online in terms of the function they utilized – that of a “snooze” feature – and then rectified further to delete the ad entirely when further queried and served with the One-Month Notice.

In sum, I find the One-Month Notice is not valid. The Landlord has not met the burden of proof to show subletting or assignment occurred in fact. I so order the One-Month Notice cancelled and there is no Order of Possession to the Landlord.

As the Tenant was successful in this application, I find the Tenant is entitled to recover the \$100 filing fee paid for this application. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

Conclusion

For the reasons above, I order the One-Month Notice issued on July 28, 2022 is cancelled and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: January 13, 2023

Residential Tenancy Branch