



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACPHERSON REAL ESTATE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on September 21, 2022. They seek an order to cancel the One Month Notice to End Tenancy for Cause (the “One-Month Notice”) issued by the Landlord on September 13, 2022. They also seek compensation 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 February 6, 2023. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Both parties attended the hearing, and each was provided the opportunity to present oral testimony and make submissions in the hearing. The Landlord confirmed they received the Notice of Dispute Resolution Proceeding from the Tenant in a timely manner, advising them of all aspects of this hearing process.

Preliminary Matter – parties’ exchange of evidence

At the start of the hearing the Tenant stated they served their evidence to the Landlord via registered mail. In the Tenant’s evidence there is a registered mail label bearing a tracking number identifier. The Landlord stated they only received the Notice of Dispute Resolution Proceeding, and not the Tenant’s evidence.

Without positive proof from the Tenant of their service of evidence, with the only reference point provided being a mailing label, I omit their documented evidence from consideration. This is in the interest of procedural fairness. I informed both parties in the hearing that testimony as stated in the hearing is a *form* of evidence that is on the record and receives full consideration.

The Landlord submitted that they mailed their documented evidence to the Tenant. The Tenant confirmed they received this evidence; therefore I give it full consideration herein.

Issues to be Decided

Is the Tenant entitled to a cancellation of the One Month Notice?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an Order of Possession of the rental unit?

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

Background and Evidence

Neither party submitted a copy of the tenancy agreement. This was due to the longer length of this tenancy that began in April 2002. The Tenant confirmed the current rent amount of \$1,475, each month paid by their parent who also attended the hearing and was named as a Tenant on the One-Month Notice. This parent stated they had a room at the rental unit, and stayed there “a couple of times per week.”

The copy of the One-Month Notice document in the evidence shows the Landlord issued it on September 8, 2022. They served this to the Tenant via registered mail, as confirmed by the Tenant.

On page 2 of the document, the landlord indicated the following:

- ☐ Tenant has assigned or sublet the rental unit. . . without landlord’s written consent.

On page 2 the Landlord listed details:

We have received numerous complaints from residents of the building advising the tenant has allowed family members to run the suite as a Short Term rental and subletting the suite. We have asked this tenant about the issue and they deny this allegation. We have not had access to the suite and the locks have been changed and we have not seen the tenant at the building for a long

time. We have also been advised that they recently physically removed a sublet from the suite and left their furniture in the parking area.

In the hearing, the Landlord described the tenant's actions that caused concern and prompted their issuance of the One-Month Notice. These are:

- they had complaints from building residents about the Tenant subletting out their rental unit, culminating in one instance of the Tenant evicting those subletters and changing the locks, placing that person's personal property out in the parking lot in September 2022
- other residents complained of others "coming and going all the time" and "parties and noise and nonsense" – these were "numerous complaints"
- they provided emails from a 'couple of residents', with others not prepared to provide something in writing
- they brought this to the Tenant's attention a couple of times
- they received a key to the rental unit only within the last couple of months, presumably prompted by this end-of-tenancy notice
- they personally had not seen the Tenant for "a number of years"

In their evidence, the Landlord presented an email from one other building resident that sets out

the original renter [i.e., the Tenant] hasn't been there for at least 4 years and the sister rents out the rooms with the older drunk brother as the caretaker she also has other rentals around that she doing the same thing this is what happens where there a day late for there rent who is now thinking of going to tendency for rebuttal as the sister is about to move in another tenant to take the room looks like a shit show up there with the sister throwing stuff around the dumpster and driveway

Also:

Not going to ask other people to send emails pretty sure [named individuals] are wondering what's going there are looking at it also just feel sorry this woman but the sister and the drunk brother keep loading up the driveway with her stuff and the verbal crap is annoying missing no where to be found haven't lived here in 4 years and she showing the her rooms to rent this is BS now I know there never is visitor parking

The Landlord also included their past messages to the Tenant, from August 2021. This was an inquiry to the Tenant about vacating their sublet, a question on who is "partying in the suite" if the Tenant is not present, with no one allowed to be present for more than 2 weeks. The Landlord cites their information that certain other people were present in

the rental unit for “over 1 year.” The Landlord explained to the Tenant at this time that subletting is a breach of their agreement, and this was “not the first time they had this complaint from the other people in the building.”

In the hearing, the Tenant responded to the issue as set out on the One-Month Notice, and the Landlord’s testimony:

- these emails, as presented in the Landlord’s evidence, are “hearsay”
- this is a ploy by the Landlord to evict the Tenant, thereby receiving more money for rent
- people do stay occasionally in the rental unit, with it being a 3-bedroom suite
- there is no proof that the Tenant is subletting
- they changed the locks approximately three times in 20 years because of “wear and tear”, and they provided another key to the Landlord when the Landlord claimed they could not enter the rental unit
- the Tenant does not maintain any relations with others in the building, and they have no idea who these other people entering/exiting the building may be

Analysis

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

In this matter, the onus is on the Landlord to provide they have cause to end the tenancy. On my review, they have not provided sufficient evidence to prove the details about subletting, as indicated on the One-Month Notice. There is both a lack of quality and quantity of necessary evidence to overcome the burden of proof here.

The Landlord did not provide specific information on dates, times and number of incidents involving the Tenant, or positive identification on those they concluded were subletters at the rental unit. They did not present that the matters of noise or other inappropriate actions by visitors or presumed guests to the building were investigated to the fullest extent possible. As such, I find it more likely than not that the Landlord’s charge of subletting here is speculative. As well, the emails the Landlord provided are somewhat cryptic, and quite difficult to understand; I find these are based on conjecture, and not set out very well with evidence. There must be sufficient evidence to end the tenancy on these grounds.

Though the Landlord also provided in an earlier message to the Tenant that subletting violated the tenancy agreement, the Landlord did not provide said agreement to show this for the hearing.

In sum, I find the Landlord did not provide adequate evidence of the Tenant's subletting for this to be positive grounds to end the tenancy. I find the One-Month Notice is invalid, and order it cancelled.

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 September 8, 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: February 6, 2023

Residential Tenancy Branch