Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, DRI, OLC PSF, LRE

Introduction

This hearing convened to deal with the tenant's application and amended applications for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). Altogether, the tenant applied for:

- An order cancelling the One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) issued by the landlord.
- To dispute a rent increase that is above the amount allowed by law.
- An order requiring the landlord to comply with the Act, regulations, or tenancy agreement.
- An order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act.
- An order suspending or setting conditions on the landlord's right to enter the rental unit.

The tenant, the tenant's agent/mother (JM), the landlord's legal counsel (counsel) and landlord's agent attended the hearing, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties apart from counsel were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are

reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary Issues and Procedural Matters –

Rule 2.3 requires that claims made in the applications be related to each other and further, that I may dismiss unrelated claims with or without leave to reapply. I find the additional claims of the tenant are unrelated to the primary issue of disputing the 1 Month Notice. I therefore **dismiss** the tenant's additional claims, with leave to reapply. Leave to reapply is not an extension of any applicable time limit.

As to the evidence submitted by the parties, some evidence by both parties was not filed within the required time listed under the Rules. However, neither party objected to the evidence and all evidence was considered, whether referred to or not in this Decision.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support the 1 Month Notice?

Should the Notice be cancelled or enforced?

Background and Evidence

There is no written tenancy agreement between the current respondent/landlord and the tenant. The current landlord is a numbered corporation who purchased the property in March 2022, according to counsel. The rental unit is a home situated on a property which has commercial businesses.

Filed in evidence was the 1 Month Notice. The Notice was dated January 23, 2023, for an effective move-out date of March 1, 2023. The tenant confirmed receipt of the Notice on January 25, 2023 when it was attached to the door.

Pursuant to Rule 6.6 and 7.18, the landlord, through counsel, proceeded first in the hearing to support the Notice.

The reason listed on the Notice to end tenancy was:

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

In the Details of Cause(s) portion of the Notice, the landlord stated that the *"(*landlord/numbered company name*) has not given written consent to (*tenant name*) to Sublet the property. We became aware recently in November 2022 that (*tenant name*) has been subletting the unit".*

In support of the Notice, counsel submitted that the property in question was zoned for commercial use and when the landlord purchased the property, the seller did not disclose the tenancy of this tenant. The landlord believed the entire property was all commercial.

Counsel submitted that this situation involves a 2nd tier sublet. In explanation, counsel submitted there was a written tenancy agreement between the owner at that time and a numbered company, ending in "77". The landlord had no knowledge of a tenancy agreement and at the time, "M" (an auction company) had 2 properties. The landlord was told that all properties were commercial tenancies. The area is heavily commercial and industrial, and the landlord only wants commercial tenancies.

Filed in evidence by the landlord was a written tenancy agreement, which showed a logging company as landlord and a numbered company, "77" as the tenant. That tenancy agreement showed a tenancy start date of September 1, 2021, for a fixed-term through August 31, 2024, and monthly rent of $900. The tenancy agreement, however, was not signed.

Additional evidence included a redacted, "Full Narrative Appraisal" for the commercial property and vacant lot, a BC Company Summary, which shows "M" as an auction company, with company number ending in "77", with "D" and "R" as directors.

Tenant's response –

In response, the tenant, through his agent/mother, JM, submitted that they are known to the landlord, SR and have worked for their families.

JM submitted that another person also occupies the rental unit, LB; however, LB is the tenant's roommate and occupies the basement level of the home, having done so for four years.

The tenant submitted that he has never paid hydro or utilities before, although the landlord is now attempting to charge him for utilities.

The tenant submitted that he moved onto the property 5 years ago, and at first, he was not a tenant. The tenant explained that he paid rent to the tenant of the home at that time, "B", and when B moved out, he stayed, paying rent to two other individuals, "D" and "R" as the tenant. The tenant submitted that when the present landlord purchased the property, he began paying the monthly rent of $900 to landlord, SR.

In rebuttal, counsel submitted that charging the tenant GST was an oversight and the GST charges have been reversed and credited.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met that burden.

Rule 7.17 states the arbitrator has the authority to determine the relevance, necessity, and appropriateness of evidence.

In addressing counsel's submission that these matters involve a 2nd tier sublet, I find there is no such cause under the Act. Apart from that, the landlord lists only the tenant as allegedly subletting the rental unit on the 1 Month Notice.

As to that listed cause, I find the landlord submitted insufficient evidence to support this claim. Under the Act, subletting means that a tenant enters into a tenancy agreement

with sub-tenants, but retains their tenancy agreement with the landlord. The tenants would have to have moved out to allow the sub-tenants to live in the property. The tenants still reside in the property, so there is no sub-tenancy. I find that LB is a roommate of the tenant. For this reason, I find the landlord submitted insufficient evidence that the tenant has sublet the rental unit.

As a result of the above, I find the landlord has submitted insufficient evidence to support the cause listed on the 1 Month Notice dated January 25, 2023.

Therefore, I grant the tenant's application and **order** the 1 Month Notice dated January 25, 2023, is **cancelled and of no force or effect**. The tenancy continues until it may otherwise legally end under the Act.

Additional information, orders and findings –

When reviewing the evidence, I also find I must make additional findings and orders, under authority of section 62(2) and (3) of the Act as there appeared to be a question of the status of the tenant as to whether he is a tenant or sub-tenant.

The Act defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Tenancy Policy Guideline (Guideline) 9 states the following:

Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- *the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and*
- *the tenant pays a fixed amount for rent.*

When a purchaser buys a property with existing tenants, the buyer becomes the new landlord.

I must also point out that although the landlord claims not to have known about this tenancy, the redacted "Narrative Appraisal" when describing the structures on the property clearly list one of the buildings as a "Residence", describing it as a *"900 square foot residence with a full below grade basement which is partially finished" with "2 bedrooms and one full bathroom on the main floor"*.

In the matters before me, due to the undisputed evidence that the tenant has paid his monthly rent of $900 to the current landlord since the landlord purchased the property in March 2022, I find and order that there is now a tenancy agreement between the tenant and this landlord, for a monthly rent of $900.

I also find that the monthly rent includes utilities, as the tenant testified without dispute that he has always been provided utilities with his monthly rent.

While I severed the other issues in the tenant's application in order to consider the 1 Month Notice, I now caution the landlord they must comply with their obligations under the Act.

This includes not locking access to the rental unit or residential property for the tenant or their roommate, not entering the rental unit without the proper, written Notice of entry, and not increasing the monthly rent above the allowed amounts.

As to the requirements of providing notice of entry, I remind the landlord of section 29 of the Act. A landlord **may not** enter a tenant's rental unit **without giving a proper written notice of entry to do so**. Among other requirements, section 29(1)(b)(ii) of the Act **requires that the notice of entry must be made at least 24 hours prior to the planned entry, contain the purpose for entering, which must be reasonable, and provide a specific time and date.** [My emphasis added]

The landlord must provide the tenant with a proper written notice to enter the rental unit, which must be at least 24 hours in advance, and in consideration of the deemed service provisions of section 90 of the Act. If the landlord chooses to attach the notice of entry to the tenant's door, the tenant is not deemed to have received that notice for 3 days and the entry may then not be earlier than 24 hours later. If the landlord chooses to send the notice by registered mail, the tenant is not deemed to have received the notice for 5 days and the entry may then not be earlier than 24 hours later.

Conclusion

The 1 Month Notice is cancelled and of no force or effect.

The other issues listed in the tenant's application are dismissed, with leave to reapply.

Additional orders and findings have been issued.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 16, 2023

Residential Tenancy Branch