



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, LRE, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated November 8, 2022 (the "One Month Notice") pursuant to section 47;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit pursuant to section 70(1);
- an order that the Landlord comply with the Act, the regulations, or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord confirmed receipt of the Tenant's notice of dispute resolution proceeding package and initial documentary evidence (collectively, the "NDRP Package"). I find the Landlord was served with the NDRP Package in accordance with sections 88 and 89 of the Act.

The Tenant confirmed receipt of the Landlord's documentary evidence. I find the Tenant was served with the Landlord's evidence in accordance with section 88 of the Act.

The Landlord acknowledged receipt of additional evidence from the Tenant, which the Tenant says was delivered on March 22, 2023. According to the Tenant, this evidence was in response to new allegations in the Landlord's evidence attached to the Tenant's door on March 20, 2023. The Landlord confirmed that he had had a chance to review the Tenant's additional evidence and was prepared to discuss it in this hearing.

Pursuant to section 71(2)(b) of the Act, I find the Landlord was sufficiently served with the Tenant's additional evidence on March 22, 2023. I further find it would not unreasonably prejudice the Landlord or result in a breach of the principles of natural justice for the additional evidence to be considered. As such, I allow the Tenant's additional evidence to be admitted pursuant to Rule 3.17 of the Rules of Procedure.

Preliminary Matter – Correction of Dispute Address

The parties agreed that the rental unit is a basement suite in the property. Pursuant to section 64(3)(c) of the Act, I have amended the dispute address accordingly.

Preliminary Matter – Severing Unrelated Claims

Rules 2.3 and 6.2 of the Rules of Procedure state as follows:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

(emphasis underlined)

The Tenant has applied to cancel a notice to end tenancy and has included other claims in this application. Aside from the claim to recover the filing fee, I find the Tenant's other claims in this application are unrelated to the One Month Notice. Pursuant to Rule 6.2 of

the Rules of Procedure, I sever and dismiss those unrelated claims with leave to re-apply.

Issues to be Decided

1. Is the Tenant entitled to cancel the One Month Notice?
2. Is the Tenant entitled to reimbursement of the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The rental unit is a basement suite in the Landlord's property. This tenancy commenced on June 15, 2021 and is currently month-to-month. Rent is \$1,581.00 due on the first day of each month. The Tenant paid a security deposit of \$750.00 which is held by the Landlord.

Copies of the One Month Notice have been submitted into evidence. The One Month Notice is signed by the Landlord and has an effective date of December 31, 2022. The reasons for this notice are:

- Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- Tenant has assigned or sublet the rental unit/site/property without landlord's written consent

The One Month Notice contains the following details of cause (portions redacted for privacy):

My tenant [name] sublet her apartment with no notification or request for approval from me while she is on vacation overseas. She departed Oct 28 on a multi-week trip. I noticed someone staying in her apartment 5 days later on Wed Nov 2. She has been here continuously for 7 days. I have not met her but have seen her through the windows as I arrive home and hear her from my area upstairs. Her [vehicle] has been parked outside since her arrival. The unit is on

the lower level of my house and we share access to the laundry room and the garage where I store tools plus 5 motorized vehicles worth tens of thousands of dollars. This person is not a guest but fully occupying this apartment. They have keys so have full access to the unit and in turn the communal areas of my house. [Tenant] did not inform me of this unauthorized occupant nor request my written consent. I feel she has put my property at significant risk with an unknown unapproved person living in my home. For this reason, I am giving her this One Month Notice to End Tenancy for Cause.

The Landlord confirmed that he posted a copy of the One Month Notice to the Tenant's door on November 8, 2022. The Landlord stated he knew the Tenant was away so he sent a copy of the One Month Notice to the Tenant via Facebook to make sure she received it. The Tenant's application acknowledges receipt of the One Month Notice on November 8, 2022.

The Landlord gave the following evidence and testimony:

- On September 19, 2022, the Tenant informed the Landlord that she will be going away on October 28, 2022 for a trip. The Landlord was abroad at the time. The Landlord returned home on October 31, 2022.
- On November 2, 2022, the Landlord's girlfriend noticed someone inside the rental unit and a vehicle parked outside. Over the next couple of days, the Landlord and his girlfriend observed someone working on a computer in the rental unit, cooking, and not seeming to leave. The Landlord recognized that the vehicle belonged to the person staying in the rental unit.
- The Landlord became increasingly concerned as he knew the Tenant had already been away for five days before the stranger arrived. The Landlord was concerned about the stranger having access to shared areas of the house, including the laundry room and the garage, where the Landlord keeps valuable tools, equipment, and vehicles.
- On November 7, 2022, the Landlord called the Residential Tenancy Branch (the "RTB"). The Landlord determined that he could serve the Tenant with an eviction notice for not informing the Landlord about a stranger moving in.
- The Tenant responded on November 9, 2022 after receiving a copy of the One Month Notice, indicating that it was her friend VNB who was housesitting. The person staying in the rental unit left on November 10, 2022. The Landlord's neighbour, JC, witnessed the person taking multiple trips from the rental unit to her vehicle to pack all her belongings. JC provided the Landlord with a signed statement which has been submitted into evidence.

- There was a possible earlier incident in September 2022 that the Landlord became aware of after serving the One Month Notice. A neighbour, LF, had noticed a strange woman and vehicle at the rental unit for at least two weeks. LF provided the Landlord with photos of the vehicle and a signed statement, which the Landlord submitted into evidence.

The Landlord stated that the Tenant is welcome to have guests and he was fine with the Tenant's boyfriend spending time at the rental unit. The Landlord stated that this incident felt different because it was someone whom he didn't know.

The Landlord expressed that he didn't think the person was only there for housesitting. The Landlord referred to the Tenant's evidence which suggests that the Tenant's plants only need watering mid-month during the month that the Tenant was away, rather than day-to-day care. The Landlord referred to JC's witness statement which describes JC having seen the person with a lot of things when she was leaving. The Landlord noted that in the Tenant's Facebook messages, the Tenant had mentioned to VNB that she had "said yes to others", as if the Tenant was giving the suite to other people.

The Landlord explained that he is frequently away from home due to the nature of his job. The Landlord argued that granting a stranger access to the shared space in the home is a serious security threat. The landlord submitted that granting access for an unapproved sublet or occupant in the rental unit puts the Landlord's property "at significant risk". The Landlord argued that since his girlfriend is often home alone while the Landlord is away, the Tenant also "seriously jeopardized the health or safety of another occupant" or the Landlord. The Landlord expressed that neither he nor his girlfriend felt at ease while the stranger was there. In addition, the Landlord argued that the Tenant sublet the rental unit without his consent. The Landlord argued that the person had the key for full access, had occupied the rental unit as a resident, and had engaged in activities such as cooking, doing laundry, and working on her computer. The Landlord noted that the utilities were included in the rent and the person was consuming utilities on the Landlord's expense. The Landlord argued that the person was not a guest, had moved into the rental unit, and had looked like she was planning to stay for the full month that the Tenant was away.

The Tenant denied that she had rented, assigned, or sublet the rental unit with money exchanging hands. The Tenant stated that she didn't know there were any issues between the Landlord and herself until receiving the One Month Notice. The Tenant expressed that the parties could have communicated about any issues outside of the arbitration process.

The Tenant gave the following evidence and testimony:

- The Tenant was home for the month of September 2022. Due to the Tenant's work, she leaves very early in the morning and returns at around evening time. The Tenant was also out doing a lot of rock climbing at the time. The Tenant's parents came to visit, and the Tenant's boyfriend came by, not that frequently. They were the only guests. The Tenant did talk to the neighbours LF and JC during this time. The Tenant is unsure about the woman referred to by LF, though the Tenant has the same hair colour.
- The vehicle parked in the Tenant's driveway spot in September 2022 belonged to a co-worker who was going out of province to work for several weeks. The Tenant had an agreement with her boss to drive the co-worker to and from the airport, and the Tenant's boss would pay the Tenant for her time and gas.
- The Tenant's close friend VNB stayed at the rental unit in November 2022 while the Tenant was away. The Tenant didn't have friends or neighbours in town that she could trust to care for her fifty-plus plants. The Tenant has expensive plants which is related to her profession. VNB was in the process of moving between cities and had boxes with her because of the move. VNB had her own home and her new lease was starting November 1, 2022. VNB agreed to move to her new place a bit later to housesit for the Tenant.
- VNB is not at risk of breaking down doors. VNB is a reasonable and responsible person. The Tenant requested that VNB not have any guests at the rental unit and VNB complied with that request. VNB was working on the computer to write a book while she was in the rental unit. There was no partying. The Tenant had mentioned to the Landlord that someone would be "coming by".

The Tenant argued that she was allowed to have guests. The Tenant argued that having guests stay for several days is not grounds for eviction. The Tenant argued that she didn't think the Landlord needs to be worried about the Tenant's mother, who is in her seventies, and the Tenant's close friend VNB. The Tenant stated that her guests had access to the rental unit and shared space, but not the whole home. The Tenant argued that her guests' consumption of power and water was not more than what a regular tenant would normally use at home. The Tenant argued that no one's health or safety was jeopardized.

The Tenant emphasized that there was no contract and VNB did not pay the Tenant anything. The Tenant stated that her mother was going to come by but didn't feel comfortable in the Tenant's home anymore.

Analysis

1. Is the Tenant entitled to cancel the One Month Notice?

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 47(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 52, which states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

Section 47(2) further requires that the effective date of a landlord's notice under section 47 must be:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I have reviewed the One Month Notice and find that it complies with the requirements of sections 52 and 47(2) of the Act.

I find the Tenant was sufficiently served with a copy of the One Month Notice on November 8, 2022 pursuant to section 71(2)(b) of the Act.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such notice. Records indicate that the Tenant submitted this application on November 17, 2022. I find the Tenant made this application within the time limit required by section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

The reasons provided in the One Month Notice correspond to sections 47(1)(d)(ii), (d)(iii), and (i) of the Act, which state:

Landlord's notice: cause

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

(d) the tenant or a person permitted on the residential property by the tenant has

[...]

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

[...]

(i) 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*]; [...]

Based on the evidence presented, I am not satisfied that the Landlord has established cause for ending this tenancy for any of the reasons selected on the One Month Notice. I will address each of the causes in the following order:

- a. assignment or sublet without consent (s. 47(1)(i))
- b. serious jeopardy or significant risk (ss. 47(1)(d)(ii) and (d)(iii))

a. Assignment or Sublet without Consent (s. 47(1)(i))

According to Residential Tenancy Policy Guideline 19. Assignment and Sublet ("Policy Guideline 19"), "sublet" under the Act 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. This must be for a period shorter than the term of the original

tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. If the original tenant transfers their rights to a subtenant under a sublease agreement and vacates the rental unit, a landlord/tenant relationship is created and the provisions of the Act applies to the parties. If there is no landlord/tenant relationship, the Act does not apply.

Policy Guideline 19 goes on to differentiate a sublet from a few other situations, such as a tenant allowing additional occupants to move into the rental unit, the tenant renting out a portion of the rental unit to a roommate, or the tenant renting out the rental unit to others for vacation or travel accommodation. In particular, a sublet under the Act does not include occupying or renting a rental unit as vacation or travel accommodation (such as Airbnb or VRBO) because the Act does not apply to living accommodation occupied for those purposes (see section 4(e) of the Act).

The key is that for there to be a sublet under the Act, there must be a landlord/tenant relationship between the tenant and the subtenant via a sublease agreement, whether written or oral, for a term shorter than the original term of the tenancy.

In this case, I am not satisfied that there was a landlord-tenant relationship between the Tenant and VNB, or that VNB was the Tenant's subtenant. I find VNB stayed at the rental unit for approximately one week in November 2022 while the Tenant was away on her trip. Based on the Facebook messages submitted by the Tenant, I find VNB had originally intended to stay at least two weeks. However, I find there is insufficient evidence of the Tenant's intention to move out of the rental unit and grant "exclusive occupancy" to VNB. Furthermore, I find there is insufficient evidence of any payment of rent from VNB to the Tenant pursuant to a sublease agreement. I find that VNB was staying at the rental unit to housesit for the Tenant, which included taking care of the Tenant's plants. I find VNB was an overnight guest rather than a subtenant. I also note that given the length of VNB's stay and the Tenant's explanation regarding VNB's boxes, I do not find VNB to have been an occupant in the sense of having moved into the rental unit to occupy it as her residence, either on a full or part-time basis. In addition, I find there is insufficient evidence to prove that the Tenant had attempted to sublet the rental unit to other individuals while she was away in November 2022. I accept the Tenant's Facebook messages may have been referring to other potential guests or house sitters.

Similarly, I do not find the Tenant to have sublet the rental unit in September 2022. I accept the Tenant's testimony that she was home during this month and that her

parents were there to visit her. I find the Tenant's parents would have been overnight guests rather than subtenants. I note that the Landlord did not specifically refer to this incident in the details of cause on the One Month Notice. I address it because I find both parties were prepared to discuss this incident as an alleged incident of sublet, which was one of the causes indicated on the One Month Notice.

Based on the evidence presented, I do not find the Tenant to have purported to sublet the rental unit without the Landlord's written consent.

According to Policy Guideline 19, assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord. I do not find the Landlord to allege that the Tenant had purported to assign the tenancy agreement, nor do I find an assignment to be made out based on the evidence presented.

I conclude the Landlord has not established that the Tenant purported to assign or sublet the rental unit without the Landlord's written consent under section 47(1)(i) of the Act.

b. Serious Jeopardy or Significant Risk (ss. 47(1)(d)(ii) and (d)(iii))

I find the Landlord has identified potential risks and liabilities that may arise due to strangers visiting the rental unit. However, I note that a tenant is responsible for persons permitted on the rental property by the tenant. Furthermore, it is not possible for a landlord to approve every person invited to the rental unit by the tenant. Clause 11(1) of the parties' tenancy agreement, which is in the standard RTB form, states that the landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit. In addition, clause 11(2) states that the landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

I accept that the potential risks and liabilities identified by the Landlord are valid reasons why landlords, especially those who include utilities in the rent and share common space with their tenants, may want to include additional terms in the tenancy agreement about guests' use of common areas, permission for individuals other than the tenant to occupy the rental unit, and the maximum number of occupants. For more information about occupants and terms in the tenancy agreement regarding occupants, please refer to Policy Guideline 19 and Residential Tenancy Policy Guideline 13. Rights and Responsibilities of Co-tenants.

In this case, I find the Landlord has not provided evidence of actual serious jeopardy or significant risk to warrant terminating the tenancy. I find there is insufficient evidence to prove that the Tenant or any person permitted on the property by the Tenant, such as VNB, had engaged in any inappropriate conduct that would have jeopardized the health, safety, lawful right or interest of the Landlord or other occupants of the property, or put the property at significant risk. I find the parties' evidence to be that VNB was cooking, doing laundry, doing dishes, taking care of the Tenant's plants, and working on her computer while staying at the rental unit.

Therefore, I am unable to conclude that the Landlord has established that the tenancy should be ended under sections 47(1)(d)(ii) or (iii) of the Act.

For the reasons given above, I am not satisfied that the Landlord has established cause for ending this tenancy under the One Month Notice. Accordingly, the One Month Notice is cancelled and of no force or effect.

2. Is the Tenant entitled to reimbursement of the filing fee?

As the One Month Notice has been set aside on this application, I grant the Tenant reimbursement of her filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(a) of the Act, I authorize the Tenant to deduct \$100.00 from rent payable to the Landlord for the month of May 2023.

Conclusion

The One Month Notice is cancelled and of no force or effect. This tenancy shall continue until ended in accordance with the Act.

Pursuant to section 72(2)(as) of the Act, the Tenant is authorized to deduct \$100.00 from rent payable for the month of May 2023 on account of the filing fee awarded.

The Tenant's claims regarding the Landlord's right to enter the rental unit and an order for the Landlord to comply are severed under the Rules of Procedure and dismissed with leave to re-apply.

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: April 20, 2023

Residential Tenancy Branch