



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding HERMITA VILLA HOLDING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, LRE, LAT, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing, by teleconference, was held on June 2, 2023. The Tenant's applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided affirmed testimony. Both parties confirmed receipt of each other's evidence packages and no service issues were raised.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Residential Tenancy Act* (the "Act"), some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether or not the tenancy is

ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Tenant's application with the exception of the following ground:

- to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice").

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on January 29, 2023. The Notice indicates the following reasons for ending the tenancy on the second page:

Tenant has allowed an unreasonable number of occupants in the unit/site.

Tenant or a person permitted on the property by the Tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the Landlord.*
- *seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.*
- *put the Landlord's property at significant risk.*

The Landlord issued the Notice for several reasons. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether there are sufficient grounds to end the tenancy.

The Landlord testified that the Notice was issued because the Tenant illegally sublet the rental unit to at least two different people while she was away in China last year (October 2022 – January 2023). The Landlord stated that the tenancy agreement shows that the Tenant signed and agreed to a term prohibiting subletting and that she knew she was not supposed to. The Landlord also stated that the Tenant asked him in the summer of last year whether she could have her sister live in the unit while she was away in China, and the Landlord stated that the Tenant was not allowed, nor was she allowed to sublet.

The Landlord pointed to the signed documents by many other Tenant's in the building stating that they all agree and support the Landlord evicting this tenant due to the subletting.

The Tenant pointed out that the only signed tenancy agreement that exists is one she signed for a different rental unit in the building, and when she moved units, she never signed a new tenancy agreement. A copy of the tenancy agreement was provided into evidence. The Tenant denies that she was ever made aware that she could not sublet, and she believes it was a misunderstanding that has now been resolved because she does not sublet anymore. The Tenant stated that the building manager was aware of the subletting and did nothing about it until January of 2023, which is when she stopped subletting.

Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy.

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

After reviewing the Notice, I note that it lists multiple grounds for ending the tenancy, as above. However, it appears that much of the Landlord's testimony and evidence presented at the hearing relates to the Tenant's alleged subletting. Further, under the details of cause section of the Notice, it only identifies the subletting issue. As such, I find this is the issue I will focus on, and whether or not it has been sufficiently demonstrated that this issue gives the Landlord sufficient cause to end the tenancy under any of the grounds selected on the Notice.

First, I turn to the tenancy agreement issue. I find there is no valid and signed tenancy agreement for the current tenancy. The previous tenancy agreement was for a different unit and does not apply to this tenancy. Currently the parties have a verbal tenancy agreement. There is no evidence that the parties came to any sort of agreement on whether or not subletting was allowed or prohibited, as it has not been put in writing during this tenancy.

I do not find the Landlord has sufficiently demonstrated that the Tenant has allowed an unreasonable number of occupants in the rental unit, as it appears there was only 1 or 2 people in the unit at any one time while it was being sublet.

Further, I do not find the Landlord has sufficiently demonstrated that the subletting in the fall of 2022 significantly interfered with or unreasonably disturbed other occupants or seriously jeopardized the health or safety or lawful right of another occupant or the Landlord. I note the Landlord has a document signed by several tenants in the building showing they support the Landlord evicting the tenant. Although they support her eviction, I do not find this shows that any of those tenants were unreasonably disturbed or that their health or safety was seriously jeopardized. The signed letter does not sufficiently articulate those matters. Further, I also do not find there is sufficient evidence to show the Tenant has put the Landlord's property at significant risk.

I find that the Landlord has not provided sufficient evidence to support the reason to end the tenancy; therefore, the Tenant's application is successful and the Notice received by the Tenant on January 29, 2023, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenant was successful with her application, I grant the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

The Tenant may deduct the amount of \$100.00 from one (1) future rent payment.

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: June 6, 2023

Residential Tenancy Branch