



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, DRI-ARI-C, AS, FFT / OPC, FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the Act). The Landlords' application for:

- an order of possession for cause pursuant to section 55; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

And the Tenant's application for:

- the cancellation of the One Month Notice to End Tenancy for Cause (the Notice) pursuant to section 47;
- an order allowing the Tenant to assign or sublet because the Landlords' permission has been unreasonably withheld pursuant to section 65; and
- authorization to recover the filing fee for this application from the Landlords pursuant to section 72.

This matter was reconvened from a prior hearing on February 6, 2023. I issued an interim decision setting out the reasons for the adjournment on that same date (the Interim Decision). This decision should be read in conjunction with the Interim Decision.

The Tenant did not attend this hearing. The Landlords were represented by an agent (JB).

JB testified that the Landlords served the Tenant via email with the documents I ordered served in the Interim Decision. The Tenant's email address was regularly used for correspondence throughout the tenancy. I deem that the documents were served in accordance with the Act.

Issues to be Decided

Are the Landlords entitled to:

- 1) an order of possession; and

- 2) recover the filing fee?

Is the Tenant entitled to:

- 1) an order cancelling the Notice;
- 2) an order to allow him to sublet the rental unit; and
- 3) recover the filing fee?

Background and Analysis

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

1. The Tenancy Agreement

The rental unit is a five-bedroom single detached house with a basement suite. The parties entered into a tenancy agreement to rent the basement suite on May 8, 2020. Monthly rent was \$900.

On June 1, 2021, the parties entered into a tenancy agreement whereby the Tenant rented the entire residential property for \$2600 per month. The Tenant paid the Landlords a security deposit of \$1300 and a pet damage deposit of \$1300, which the Landlords continue to hold in trust for the Tenant.

The parties submitted copies of the tenancy agreements into evidence. Each contained an addendum which included the following terms:

14. No additional long term guests

There will be no additional long term guests or arguments permitted without the written consent of the landlord or the landlords agent [redacted]. A long term guest is considered to be anyone staying for more than fifteen (15) days with in any sixty (60) day., or as described in any governing bylaw for strata complex (if applicable).

23. Occupancy

The tenants are aware they may not have any additional residents living in the home who are not listed on the original residential tenancy application without receiving prior written approval from the landlord.

[the "Additional Occupant Clause"]

Neither party provided me with a copy of the original residential tenancy application, so I cannot say who is listed on it as an approved additional resident.

At the February hearing, the Tenant disputed the authenticity of the tenancy agreements entered into evidence. Both tenancy agreements provided by the landlords were signed by the parties using “Authentisign” software. After the February hearing, in compliance with the Interim Decision, the Landlords provided correspondence with the company administering the AuthentiSign documents which confirmed the authenticity of the tenancy agreements.

As such, I find that the copies of the tenancy agreements entered into evidence are genuine and contain the true terms of the tenancy agreement.

2. Is the Notice Valid?

On September 27, 2022, the Landlords’ agent served the Tenant with the Notice personally. It specified an effective date of October 31, 2022. It listed the reasons for ending the tenancy as:

- The Tenant has allowed an unreasonable number of occupants in the unit;
- The Tenant has breached of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- The Tenant has assigned or sublet the rental unit without Landlords written consent.

The Notice provided the following details of cause:

The Tenant has rented rooms to students without authorization from Landlord plus rented the suite in basement to other people without giving this person’s information to Landlord. Since there are more than three unrelated occupants the owners’ insurance will not cover for any insurance claims.

JB testified that the Tenant admitted to renting rooms in the rental unit to students and two renting out the basement unit in a series of emails. These emails were submitted into evidence by the Tenant. On September 14, 2021, the Tenant indicates that “no one else is on the lease for tax reasons” but stated that the prior property manager permitted the basement unit to be rented out to someone else. On November 24, the Tenant references his “international student” and indicates that he will be at the rental unit to

facilitate an inspection. On December 3, he admitted to having “a roommate downstairs”.

Based on these emails, I find that the Tenant permitted at least one other person to live in the rental unit.

At the February hearing, and in the emails submitted into evidence, the Tenant asserted that the prior property manager had given him permission to have additional occupants living with him in the rental unit and to renting out parts of the rental unit to international students. On September 9 and December 7, 2021, the Landlords’ agent requested proof of this prior arrangement. The Tenant did not provide any proof and stated that the Landlords should speak with their former property manager. The Landlords did not provide any evidence from the former property manager (such as a written statement) and did not call her as a witness.

There is nothing in the documentary evidence which shows that the Landlords consented in writing to allow the Tenant to sublet any part of the rental unit.

JB testified that the Landlords are required to obtain commercial insurance on the rental unit, which costs significantly more than the insurance they had previously, given that the Tenant is renting out portions of the rental unit to international students. The Landlords did not provide any documentary evidence of this.

The Landlords cited three grounds for ending the tenancy on the Notice. They only need to prove that one of these grounds is true in order for the tenancy to end.

a. Are there an unreasonable number of occupants in the rental unit?

Despite the fact that the tenancy agreement does not permit “any additional residents” living in the home without prior written approval from the landlords, I find that the number of occupants currently residing in the rental unit is reasonable.

The rental unit has five bedrooms, including a self-contained suite. Accordingly, the rental unit can comfortably house five people. I do not find that any number of occupants over one can be construed as an “unreasonable” number of occupants.

The Landlords did not provide exact evidence as to the number of international students occupying the rental unit. However, in a September 11, 2021 email, the Tenant states that there are three people living in the upper suite. In another email he indicates that a

relative of his is renting the basement suite. Based on this, I find it more likely than not that there are four occupants in the rental unit. This is not an “unreasonable” number. Accordingly, this basis for ending the tenancy is not valid.

b. Did the Tenant breach a material term of the tenancy agreement?

The Act permits a landlord to end a tenancy if the Tenant breaches a “material” term of the tenancy agreement. Per Residential Tenancy Branch (RTB) Policy Guideline 8, a “material” term is one that is so important that the most trivial breach of it gives the landlord the right to end the tenancy.

Additionally, Policy Guideline 8 sets out how a tenancy may be ended if a material term is breached. It requires that a landlord inform the tenant, in writing that:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

I have reviewed the documentary evidence submitted by both parties. I cannot find a document (or a combination of documents) which would satisfy all four of these criteria. The Landlords certainly communicated that they believed the additional occupants in the rental unit was a problem. However, I cannot locate any document in which the Landlords asserts that they believe this a breach of a *material* term, or where they provide a deadline by which date the problem must be fixed or the tenancy will end.

As such, I cannot find that, even if the Additional Occupant Clause is a material term, the Landlords met the requirements to end the tenancy for a breach of a material term.

This basis for ending the tenancy is not valid.

c. Has the Tenant assigned or sublet the rental unit without Landlords' written consent?

Based on the evidence provided, I accept that the Tenant has rented out bedrooms and the basement of the rental unit without the Landlords' written consent. Despite this, I do not find that he can be evicted on this basis.

RTB Policy Guideline 19 addresses assignment and subletting. It states that the use of the word “sublet” can cause confusion because under the Act it 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. “Sublet” has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the Act, this is not considered to be a sublet.

The Tenant has not vacated the rental unit. He lives with the additional occupants. As such, while the arrangement between himself and the other occupants may be called a “sublet” in the colloquial sense, it does not meet the definition of “sublet” for the purposes of the Act. This requires that a landlord/tenant relationship under the Act come into existence. This has not occurred in the present case.

As such, I do not find that the Tenant can be considered to have “sublet” the rental unit for the purposes of the Act. This basis for ending the tenancy is therefore invalid.

As all the listed reasons for ending the tenancy on the Notice are invalid, I order that the Notice is cancelled and of no force or effect. The tenancy shall continue.

As the Landlords have been unsuccessful in their application, I decline to order that the Tenant reimburse them the filing fee.

3. Tenant’s Application

The Tenant did not present evidence on his application for an order that he be allowed to assign or sublet the rental unit as the Landlords have unreasonably withheld their consent. As this is his application, he bears the onus to prove the fact necessary to support his it. By failing to provide evidence on this point, I find that he has failed to discharge his burden of proof.

Accordingly, I dismiss this portion of the Tenant’s application, without leave to reapply.

As the Tenant did not attend the reconvened hearing, and as I dismissed a portion of his application, I do not find it appropriate to order that the Landlords reimburse him the filing fee.

Conclusion

I dismiss the Landlords’ application without leave to reapply.

I grant the Tenant's application to cancel the Notice. The Notice is cancelled and of no force or effect. The tenancy shall continue.

I dismiss the balance of the Tenant's Application, without leave to reapply.

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 16, 2023

Residential Tenancy Branch