



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, FFT

Introduction

On March 31, 2023, a representative for the Tenant filed an Application at the Residential Tenancy Branch to dispute the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) served by the Tenant’s Landlord on March 22, 2023. They also applied for reimbursement 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 July 10, 2023. Both the Tenant’s delegate, their support, and the Landlord and their agents attended the teleconference hearing. At the outset of the hearing the Tenant’s delegate confirmed they received the Landlord’s evidence that the Landlord mailed to them on July 18.

Preliminary Matter – Applicant Tenant and their delegate

A delegate, or representative, for the Tenant made the Application at the Residential Tenancy Branch. I find they did so on the Tenant’s behalf. The delegate, and one support person who spoke on their behalf in the hearing, attended and presented their side of the situation. They explained that the Tenant as named on the tenancy agreement is often out of the country, and they pay the rent for the rental unit as specified in the agreement. They submit this was with the Landlord’s knowledge and consent.

The Landlord, who attended the hearing, stated they did not know of this delegate living in the rental unit or paying the rent. The Landlord’s agent who is the property manager explained that they received rent from this delegate as of February 1, 2023, and that is a common situation, where one person pays on the Tenant’s behalf. The agent was

clear that the delegate did not have any written agreement with the Landlord – they only discussed a method of payment with this delegate, and this does not mean the delegate is the legal occupant of the rental unit. In order to have a second legal occupant, the Landlord requires an addendum to the existing tenancy agreement.

I find the delegate was paying rent on the Tenant's behalf and that does not confer the rights and obligations as set in a tenancy agreement. The Tenant who signed the tenancy agreement did not attend the hearing; however, concerning the events for which the Landlord seeks to end the tenancy, the delegate had first-hand knowledge and was allegedly responsible for the situation.

My decision herein does not confer any rights or responsibilities to the delegate as a tenant in this situation; rather, I reproduce their statements in the hearing in this decision insofar as they are a delegate of the Tenant. The delegate is acting in the Tenant's best interests for the purpose of this hearing, by seeking a cancellation of the end-of-tenancy notice that the Landlord issued to the Tenant. In this decision I distinguish between the "Tenant" as the party named on the tenancy agreement, and the "Tenant's delegate" who attended the hearing and spoke to the issues.

Issues to be Decided

- Is the Tenant entitled to a cancellation of the One-Month Notice?
- If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit, in line with the One-Month Notice, pursuant to s. 55 of the *Act*?
- Is the Tenant eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement. The tenancy started on November 1, 2019, with the Tenant signing the agreement jointly with the Landlord on October 25, 2019.

The Landlord pointed to item 12a in the tenancy agreement, to show that the Tenant agreed “not to use the rental property for commercial purpose without landlord’s written permission.” The agreement names examples as “short-term rental”, and specifically “Airbnb”.

Further, page 10 item 7 provides that the Tenant “may assign or sublet the rental unit to another person with the written consent of the landlord.”

The agreement, item 5, also specifies that “Except for casual guests, no other persons shall occupy the premises without written consent of the Landlord. Tenant must obtain approval from Landlord for any guests staying in the premises for longer than two weeks.”

The Landlord also provide a copy of the strata bylaws that are in place at the rental unit property. In that document, section 31(5) states that “A strata lot must not be used for short-term accommodation purposes, such as a bed-and-breakfast, lodging house, hotel, Airbnb, home exchange, time share or vacation rental.”

The Landlord issued the One-Month Notice on March 16, 2023. This set the end-of-tenancy date for April 30, 2023. Both parties provided a copy of this document in their evidence. The reasons provide on page 2 of the document are:

- ☐ Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- ☐ Tenant has assigned or sublet the rental unit . . . without landlord’s written consent

The Landlord provided the following details on page 2 of the document:

On February 24th, 2023 around 3:50PM, office agent found out tenant used the rental property to do Airbnb business, there are two Indian ladies living there since Feb 4th, 2023 and they paid rent till May 4th, 2023 to a person named David who is not the rightful tenant on the lease. This action is a breach of the material term of the lease agreement.

The Landlord (via their witness in the hearing) described scheduling a visit with the Tenant for February 24th. They provided a written notice to the Tenant in advance as appears in their evidence. They discovered two other people living in the rental unit since February 4. These two people described paying rent to a third party, through to May 4th. The Landlord obtained the names of these two people, and confirmed the

information through the Airbnb app. The Landlord provided contact information for these two people in their evidence.

The Landlord then described contacting the Tenant's delegate that same day and stating to them that the Airbnb guests must leave. According to the Landlord, the Tenant's delegate stated they would "get them out immediately". The delegate informed the Landlord that they were generating extra income from Airbnb.

On February 25 the Landlord followed up again and found the two guests had moved out from the rental unit.

In the hearing, the Tenant's delegate, via their support person, raised different issues with the Landlord's submissions and evidence:

- they understood after "numerous discussions" with the Landlord that payment of rent on the Tenant's behalf would suffice to be considered an occupant
- there was no written notice from the Landlord – specifically to the Tenant's delegate – of their visit on February 24
- again on the following day, the Landlord did not provide written notice of their follow-up visit to the rental unit
- the Landlord saw the opportunity to raise the rent from this situation with Airbnb guests, by choosing to end the tenancy – in this situation the Landlord knew that the Tenant was often out of the country
- the Landlord's provided contact information in the evidence cannot stand as actual proof of Airbnb – the Landlord could have obtained contact information from anyone and used that as evidence in this hearing.

Analysis

The *Act* s. 47(1) provides authority for a landlord to issue a notice to end a tenancy if a tenant:

(h) the tenant

- i has failed to comply with a material term, and
- ii has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord written consent as required by section 34 [*assignment and subletting*]

In this matter, the onus is on the Landlord to prove they have cause to end the tenancy.

I have considered each of the issues this situation presents for consideration, and make the following findings with reference to the *Act* and the tenancy agreement:

- I find as fact that the Tenant's delegate engaged in obtaining Airbnb guests. This is strictly not allowed as per the tenancy agreement, and even the strata bylaws. The Landlord considers this to be a material term of the tenancy agreement, and indicated they were ending the tenancy for this reason on the One-Month Notice.

The One-Month Notice itself refers to the breach "not corrected within a reasonable time after written notice to do so." In this situation, I find as fact there was a verbal notice from the Landlord on February 24th, and the Tenant's delegate immediately stated the Airbnb guests would be out. There is no evidence to show the Tenant's delegate continued with Airbnb beyond this date on which the Landlord gave the Tenant verbal notice. This does not equate to written notice *per se*; however, more importantly I find the Tenant's delegate ended the Airbnb situation immediately when asked to do so, and the Landlord did not provide evidence of either earlier or later Airbnb guests that would serve as the basis for this One-Month Notice.

I find the situation was corrected by the Tenant's delegate upon receiving notice from the Landlord. Therefore, s. 47(1)(h)(ii) of the *Act* is not established in the evidence, and the One-Month Notice cannot stand as valid for that reason.

- The Landlord also served the One-Month Notice for the Tenant assigning or subletting the rental unit without the Landlord's written consent. I find this is not a situation of assigning or subletting.

There is no record that the Tenant permanently transferred their rights to the Tenant's delegate, who then became the new tenant of the Landlord; therefore, it is not an assignment.

I find this is not a subletting situation because there was no proof of a separate agreement between the Tenant and the Tenant's delegate. The Tenant's

delegate would have to be paying rent to the Tenant, who then would become the “landlord” in that relationship.

The Landlord here was accepting rent payments directly from the Tenant’s delegate – on behalf of the Tenant – so I find there was no subletting in this instance. Rather, I find this is a situation where the Tenant’s delegate is a roommate of the Tenant.

- I have also considered the situation in terms of the Tenant violating item 5 of the tenancy agreement, that which requires the Tenant to have the Landlord’s written consent for a guest that remains longer than 30 days. The timeline for this is vague; however, the Tenant’s delegate did indicate that the arrangement in which they paid rent to the Landlord directly was in place as of February 1. That would incorporate the 30-day period by the time the Landlord issued the One-Month Notice on March 16.

The Landlord may choose to refer to item 5 in the tenancy agreement as a material term; however, they were not explicit on this point. I find that was not the basis for the Landlord issuing the One-Month Notice on March 16. Further, in terms of this being a material term, there is no record of the Landlord notifying the Tenant of this in writing, and the Tenant not correcting the situation. With regard to a violation of a material term of a tenancy agreement as forming the basis for the Landlord choosing to end the tenancy, s. 47(1)(h)(ii) is explicit on the point of the situation being uncorrected after a written notice from the Landlord. There is no evidence of that here.

In sum, I find the evidence was clear that there was an Airbnb situation in place. The Landlord’s direct testimony on their discussion with the Airbnb guests outweighs the Tenant delegate’s objections as to the quality of the Landlord’s evidence. However, the Tenant’s delegate corrected the situation immediately, and the provisions of the *Act* only allow a Landlord to end a tenancy in different circumstances where the situation remains uncorrected.

Above, I find there was no subletting situation in place between the Tenant and their delegate. This reason, as indicated by the Landlord on the One-Month Notice, does not apply to the situation.

Finally, if the Landlord chose to end the tenancy for a material term breach involving the Tenant not obtaining the Landlord's written consent for the Tenant's delegate, the Landlord did not notify the Tenant of any breach in this regard as required.

For the reasons above, I find the Landlord's grounds for seeking to end this tenancy are not valid. This is with strict regard to the tenets of the *Act* regarding breaches of a material term. I order the One-Month Notice signed by the Landlord on March 16 and served the following day is of no force or effect. The tenancy shall continue.

As the Tenant was successful in this application, I find the Tenant is entitled to recover the \$100 filing fee they paid for this Application. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

Conclusion

I cancel the One-Month Notice issued by the Landlord on March 16, 2023. The tenancy shall continue.

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: July 11, 2023

Residential Tenancy Branch