



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BELMONT HOLDINGS PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNL-4M, OLC, FFT, OPC

Introduction

This hearing was convened in response to cross applications.

The landlord filed an Application for Dispute Resolution for an Order of Possession on the basis of a One Month Notice to End Tenancy for Cause, dated September 13, 2023. The Respondents on this Application for Dispute Resolution are the tenants with the initials JR and RR.

The tenant filed an Application for Dispute Resolution, in which the tenant applied to set aside a Four Month Notice to End Tenancy; for an Order requiring the landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and to recover the fee for filing an Application for Dispute Resolution. The Applicants on this Application for Dispute Resolution are the Applicants with the initials JR, MM, and JE.

At the hearing, JR stated that he intended to file an Application for Dispute Resolution to cancel the One Month Notice to End Tenancy for Cause that is the subject of the landlord's Application for Dispute Resolution. As the tenant was not served with a Four Month Notice to End Tenancy, I find it reasonable to amend the tenant's Application for Dispute Resolution to show that the tenant applied to dispute the One Month Notice to End Tenancy for Cause, which is dated September 13, 2023.

RP stated that on September 28, 2023, the landlord's Dispute Resolution Package was mailed to the rental unit, by registered mail. RP cited a Canada Post tracking number which corroborates this testimony. This number appears on the first page of this decision.

JR stated that the landlord's Dispute Resolution Package was not received by the tenant.

I favor the evidence of the landlord, who submits that the landlord's Application for Dispute Resolution was sent to the tenant, via registered mail on September 28, 2023, over JR's testimony that this package was not received. The Canada Post website shows that the aforementioned package was delivered on October 13, 2023, which I find corroborates the landlord's submission and refutes the tenant's testimony.

JR stated that the tenant's Application for Dispute Resolution was not served to the landlord, as he believed those documents would be served by the Residential Tenancy Branch. RP stated that the landlord did not receive the tenant's Application for Dispute Resolution.

As the tenant's Application for Dispute Resolution was not properly served to the landlord, the Application for Dispute Resolution cannot be considered at these proceedings. The Application for Dispute Resolution is dismissed, with leave to reapply for any issues not decided during these proceedings.

Although I cannot consider the tenant's application to cancel the One Month Notice to End Tenancy for Cause because the tenant's hearing documents were not served to the landlord, I find this is largely irrelevant. It is irrelevant because the merit of that Notice will be considered on the basis of the landlord's application for an Order of Possession.

The tenant explained that the tenant's application for an Order requiring the landlord to comply with the *Act* or the tenancy agreement is simply a request for a determination on whether he can have roommates. Although I cannot consider this issue because the tenant's hearing documents were not served to the landlord, I find this is also irrelevant. It is irrelevant because this issue will likely be addressed when I consider the merit of the One Month Notice to End Tenancy for Cause.

On September 12, 2023, the tenant submitted evidence to the Residential Tenancy Branch. JR stated that he does not know if this evidence was served to the landlord. The landlord does not acknowledge receipt of this evidence. I find that the tenant failed to establish that the tenant's evidence was served to the landlord. As such, this evidence was not accepted as evidence for these proceedings.

On September 27, 2023, the landlord submitted evidence to the Residential Tenancy Branch. RP stated that this evidence was posted on the tenant's door, although he does not recall when it was posted. The tenant does not acknowledge receipt of this evidence. I find that the landlord failed to establish that the landlord's evidence was served to the tenant. As such, this evidence was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should the landlord be granted an Order of Possession on the basis of the One Month Notice to End Tenancy for Cause, dated September 13, 2023?

Background and Evidence

The landlord and the tenant agree that:

- The tenancy began in 2019;
- The landlord and his wife, RR, are named as the tenants on the written tenancy agreement;
- Rent is due by the first day of each month;
- On September 13, 2023 the One Month Notice to End Tenancy for Cause was posted on the tenant's door;
- The One Month Notice to End Tenancy for Cause declares that the tenancy is ending because the tenant has assigned or sublet the rental unit without written consent;
- The One Month Notice to End Tenancy for Cause declares that the rental unit must be vacated by October 26, 2023; and
- The landlord and his family are currently living in the unit.

JR stated that:

- At one point during this tenancy he was living in the unit with his family;
- After his family moved out of the rental unit, he began sharing the unit with two roommates;
- The two roommates moved out of the rental unit after he received a letter from the landlord telling him he would be evicted if the roommates remained in the unit;
- He always lived in the rental unit, on a part-time basis, when he had roommates;
- He was sometimes away from the unit for employment reasons; and
- His family has now moved back into the rental unit.

RP stated that:

- In mid-August of 2023, JR moved his family and his belongings out of the rental unit;
- Two unauthorized occupants moved into the rental unit; and
- JR did not live in the rental unit with the unauthorized occupants.

AP stated that JR lived in the unit with the two unauthorized occupants on a part-time basis.

RA stated that the landlord has no concerns with JR living in the suite, but the landlord does not want him to have roommates.

Analysis

Section 47(1)(i) of the Act authorizes a landlord to end a tenancy if 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.

On the basis of the undisputed evidence, I find that the landlord served the tenant with a One Month Notice to End Tenancy for Cause, in which the landlord declared the tenancy was ending pursuant to section 47(1)(i) of the Act.

When a landlord applies for an Order of Possession on the basis of a One Month Notice to End Tenancy for Cause, the landlord bears the burden of proving there are grounds to end the tenancy.

On the basis of the evidence before me, I find that at some point during this tenancy, JR was living in the unit with two occupants who were not members of his family. In reaching this conclusion, I was influenced by the testimony of JR, who declared that he was living in the unit with the occupants on a part-time basis. I was further influenced by the testimony of AP, who confirmed that JR was living in the unit on a part-time basis.

I find the testimony of RP, who stated that JR did not live in the rental unit with the unauthorized occupants, is insufficient to convince me that JR did not live in the unit with the occupants, on a part-time basis. This testimony conflicts with testimony given by AP, who is also an agent for the landlord. The landlord submitted no corroborating evidence that supports RP's testimony or that refutes JR's testimony in this regard.

There is nothing in section 47 of the Act that allows a landlord to end a tenancy because a tenant has roommates, unless having additional occupants is expressly forbidden by the tenancy agreement or there are an unreasonable number of occupants in the unit. It is important to understand that a tenancy is not assigned and the rental unit is not sublet if the tenant continues to reside in the unit.

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. There is no evidence before that establishes the tenant assigned this tenancy agreement to a third party.

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. There is no evidence before me that establishes the tenant sublet this rental unit to a third party.

As the landlord has failed to establish that the rental unit has been assigned or that the unit has been sublet, I find the landlord has failed to establish grounds to end this tenancy pursuant to section 47(1)(i) of the Act. I therefore find that the One Month Notice to End Tenancy for Cause, dated September 13, 2023, is of no force or effect, and I dismiss the application for an Order of Possession.

Conclusion

The tenant's Application for Dispute Resolution has not been considered at these proceedings, as the tenant's hearing documents were not served to the landlord.

The tenant's Application for Dispute Resolution is dismissed, with leave to reapply for any issues not decided during these proceedings.

The landlord's Application for Dispute Resolution is dismissed, without leave to reapply.

The One Month Notice to End Tenancy for Cause, dated September 13, 2023, is of no force or effect. This tenancy continues until it is ended in accordance with the Act.

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: December 12, 2023

Residential Tenancy Branch