



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing dealt with the tenant's repeated and duplicate applications pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions and arguments. The parties confirmed that they had exchanged their documentary evidence.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order compelling the landlord to comply with the *Act*, regulation, or tenancy agreement?

Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

SW gave the following testimony. The tenancy began on June 1, 2019 with the rent of \$6214.00 due on the first of each month. The landlord issued a One Month Notice to End Tenancy for Cause on December 28, 2023 for the following reasons:

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:*

(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];

SW testified that during their periodic inspections of the unit, they found people living in the basement unit of the home that were not on the tenancy agreement. SW testified that they noticed a Life labs requisition form in a name other than the tenants but had the suite address as their home. SW testified that she noticed lots of shoes and belongings in the home. SW testified that the tenants did not ask for permission to sublet the unit. SW requests an order of possession and that the tenancy be ended.

SS testified that the landlord observed family and friends staying with them for short stays, no longer than three weeks. SS testified that one of their guests required bloodwork so they listed the suite as their address as they don't live locally. SS testified that she has never sublet the unit and has no intention to do so. SS testified that she has already told the landlord that she has never left the unit and that she won't have any long term guests again.

Analysis

When a landlord issues a notice under Section 47 of the Act they bear the responsibility in providing sufficient evidence to support the issuance of that notice. In the matter before me, the landlord has provided very limited supporting documentary evidence of a sublet. The one Lifelab form is not sufficient proof that a party is living there. The fridge full of food and numerous shoes in the basement is also not sufficient evidence to support their position. Based on the totality of the evidence before me and on a balance of probabilities, I find that the landlord has not provided sufficient evidence of a sublet, and therefore I must cancel the One Month Notice to End Tenancy for Cause dated December 28, 2023, the tenancy continues.

The tenant did not provide sufficient evidence to support a request that a specific order to have the landlord comply with the Act, regulation or tenancy agreement be issued, accordingly; I dismiss that portion of their application without leave to reapply.

The tenant is entitled to the recovery of one of the filing fees paid for this hearing. The tenants are entitled to a one time rent reduction of \$100.00 for the rent due on March 1, 2024. They are not entitled to the recovery of both filing fees as it is a repeated application dealing with the same issue.

Conclusion

The One Month Notice to End Tenancy for Cause dated December 28, 2023 is cancelled. The tenancy continues.

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: February 06, 2024

Residential Tenancy Branch