



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding City2City Real Estate Services
Inc. and [tenant name suppressed to protect privacy]

DECISION

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession; and
2. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a One Month Notice to End Tenancy for Cause, issued on March 27, 2024 (One Month Notice)
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. The parties confirmed that they received the evidence of the other party.

Although the Tenant requested more time to dispute the One Month Notice; however, the Tenant filed within the 10 days as required by the Act. I note the Canada Post tracking number filed by the Landlord shows that the Tenant was left the first notification card to pickup the package, the One Month Notice on April 2, 2024. The Tenant's application was filed on April 12, 2024.

Issue(s) to be Decided

Should the One Month Notice be cancelled?
Are either party entitled to the filing fee?

Background and Evidence

The tenancy began on July 15, 2019. Current rent in the amount of \$2,100.84.00 was payable on the first of each month. A security deposit of \$995.00 was paid by the tenant.

In a case where a tenant has applied to cancel the One Month Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

The reason stated in the One Month Notice was that the tenant has:

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

The details within the One Month Notice is as follows:

The Tenant has assigned or sublet the rental unit to other person without the landlord/landlord's agent's written consent.

The Landlord's agent testified that the Tenant is in breach of their tenancy agreement because they have breached III clause 1 of the addendum, which reads: The Rental Unit shall not be used for any illegal and business purpose and shall be used exclusively as the private residence of the Tenant(s) and the other persons named in this Agreement. The agent stated that only the Tenant is listed in the tenancy agreement and not their mother or brother.

The Landlord's agent testified that the Tenant is in breach of the tenancy agreement as they have subleased the tenancy agreement as their mother and brother continue to live their for at least 3 years.

The Tenant testified that their mother and brother moved into the rental unit when they took possession of the premises at the start of the tenancy. The Tenant stated that their mother and brother were not named on the tenancy agreement because they had just immigrated to Canada and could not speak any English and that they would be

responsible for the tenancy. The Tenant stated that the Landlord has known this for five years, which they are now trying anything to end their tenancy.

The Tenant stated that they also had informed the Landlord by text message on November 20, 2021, that they would be moving out of the premises and that their mother and brother would be staying. The Tenant stated that they never had a response from the Landlord and have continued to pay the rent. Filed in evidence is a copy of the text message to the Landlord's agent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I have considered all of the written and oral submissions submitted at this hearing, I find that the Landlord has not met the burden of proof to end the tenancy.

The Landlord is claiming a breach of a material term. A material term is a term that the parties both agreed is so important that the most trivial breach of that term gives the other party the right to end the agreement.

In this case, the Tenant, brother and mother moved into the rental unit on July 15, 2019. Clearly even by the Landlord's agents own testimony they have known this to be true for years. Therefore, I find this is not a material term of the tenancy agreement because the Landlord should have ended the tenancy in 2019 if this so important and a material term of the tenancy agreement. I find it unreasonable that the Landlord would wait over 5 years to serve the Tenant with a notice to end tenancy. I find the Tenant has not breached a material term of the tenancy agreement and had the right to rely upon the Landlord's actions that their mother and brother were entitled to remain in the rental unit as occupants.

I accept the Tenant moved out of the rental unit and their mother and brother remained in the rental unit and the Tenant continued to pay the rent. The Landlord's agent had been fully aware of this arrangement when they received the text message sent on November 20, 2021, and admitted at the hearing that they knew of this for three years. I find the Tenant had the right to rely upon the Landlord's actions that the Tenant's mother and brother were entitled to remain living in the rental unit and the Tenant would continue to remain as the Tenant.

Based on the above, I grant the Tenant's application and cancel the One Month Notice. The Tenancy will continue. As the Tenant was successful with their application, I find the Tenant is entitled to recover the cost of the filing fee. I authorize the Tenant a onetime rent reduction of \$100.00 from a future rent payable to the Landlord.

As the Landlord was not successful with their application. I dismiss the Landlord entire application without leave to reapply.

Conclusion

The Tenant's application to cancel the One Month Notice is granted. The Tenant is entitled to a onetime rent reduction from a future rent payable to the Landlord to recover the cost of the filing fee.

The Landlord's application is dismissed 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 10, 2024

Residential Tenancy Branch