



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, OLC, FFT, OPC

Introduction

This hearing dealt with the cross applications pursuant to the *Residential Tenancy Act* (the *Act*) for:

The landlord applied for:

- an Order of Possession pursuant to section 55.

The tenant applied 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 their 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, to make submissions, to call witnesses and to cross-examine one another.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled? If not, is the landlord entitled to an order of possession.

Should an order be made to compel the landlord to comply with the *Act*, regulation, or tenancy agreement?

Is the tenant entitled to the recovery of the filing fee for this application from the landlord?

Background and Evidence

CY testified that the tenant moved into the unit sometime in 2013. CY testified that the tenant has been subletting the unit without the landlords written permission. CY testified that on January 9, 2024 a One Month Notice to End Tenancy for Cause was issued to the tenant with an effective date of February 29, 2024. CY testified that the female occupant in the unit advised that she had been subletting the unit from the tenant since November 2018. The landlord requests an order of possession and that the tenancy be terminated.

Counsel submits that the landlord has not provided sufficient evidence to show that at the time the notice was issued, that a sublet was in place. Counsel submits that the landlord is relying on a dated hand written agreement but failed to provide the other occupant as a witness to support their position. Counsel submits that the notice is invalid, and that the tenancy should continue.

Analysis

When a landlord issues a notice under section 47 of the Act, they bear the responsibility of providing sufficient evidence to support the issuance of the notice. The landlord drew my attention to a transcript of an alleged phone call from the other occupant. The landlord submits that transcript conclusively proves that a sublet was in place. I do not agree with the landlord. The transcript of that phone call is vague at best and raises more questions than it answers. In addition, the landlord is relying on a hand scribbled piece of paper from 2018 that she submits is a sublease agreement but has not provided sufficient current evidence to support their claim of a sublet.

Based on the above, and considering the totality of the evidence before me, I find that the landlord has not provided sufficient evidence to prove that the tenant had in fact arranged to sublease his unit; and therefore, has not provided sufficient evidence to support the issuance of the notice. I hereby cancel the notice dated January 9 2024, it is of no effect or force, the tenancy continues.

I now address the tenant's application. The tenants request to cancel the notice has already been addressed as noted above and is successful in that regard. I address the tenants request for an order to compel the landlord to comply with the Act, regulation, or tenancy agreement as follows. The tenant didn't provide sufficient evidence to warrant a specific order being issued to the landlord, and therefore I dismiss this portion of their

application. The tenant has also requested the recovery of the filing fee. As the tenant was only partially successful in their application, I hereby dismiss this portion of their application without leave to reapply.

Conclusion

The landlord's application is dismissed without leave to reapply. The tenancy continues until its 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: June 24, 2024

Residential Tenancy Branch