



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS CNC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (“the Act”) for an order as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause (“1 Month Notice”) pursuant to section 47 *Act*;
- to allow assignment of the tenancy agreement pursuant to section 65 of the *Act*, and
- for a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant and the landlord appeared at the hearing. The landlord was represented at the hearing by A.M. and E.V. (the “landlord”). All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

Undisputed testimony was presented by the tenant that she received the landlord’s 1 Month Notice to End Tenancy after it was posted on her door on September 8, 2017. Pursuant to section 88 of the *Act*, the tenant is found to have been duly served with the landlord’s Notice to End Tenancy.

The landlord acknowledged receipt of the tenant’s application for dispute resolution by way of Canada Post Registered Mail sent on September 12, 2017. Pursuant to section 89 of the *Act*, the landlord is found to have been duly served with the tenant’s application for dispute by way of Canada Post Registered Mail.

Issue(s) to be Decided

Can the tenant cancel the landlord’s notice to end tenancy? If not, is the landlord entitled to an order of possession?

Can the tenant assign her lease?

Is the tenant entitled to a return of the filing fee?

Background and Evidence

A copy of the tenancy agreement, along with the testimony of both the landlord and the tenant showed that this tenancy began on June 1, 2014. The tenancy agreement was entered into by the tenant and her sister S.M. This was a fixed-term tenancy set to end on May 31, 2015. Following the conclusion of the tenancy, the parties agreed that the tenancy would continue on a month to month basis. Rent was \$1,050.00 per month, and a security deposit of \$525.00 paid at the outset of the tenancy continues to be held by the landlord.

The tenant explained that she was disputing the 1 Month Notice served on her in September 2017. She said that she was given a 1 Month Notice to End Tenancy for Cause after she enquired with the landlord about possibly subletting her rental unit. She stated that the landlord informed her via email that this would not be possible. Following receipt of this information, the tenant said she altered her plans and would be remaining in the rental unit.

During the hearing, the tenant acknowledged that she had taken in a new roommate after her sister had returned to the United Kingdom. She said that this person moved into the rental unit on a full-time basis starting in October 2017, and that he had previously been an occupant of the building in unit #107.

The landlord explained that a 1 Month Notice to End Tenancy for Cause was served on the tenant because of the landlord's suspicions that the tenant was subletting her rental unit. The landlord argued that the person now living in the unit in question, was formerly one of two occupants of unit #107. The landlord said that this person was no longer welcome on the property and that they had been informed by the current occupant of #107, along with the occupant of #105, that the person in question was in fact one of two former occupants from #107. The landlord explained that they take great pride in providing a safe rental unit to all occupants and are held in high esteem by the building's occupants.

In addition to her application to cancel the landlord's 1 Month Notice for Cause, the tenant has applied to have the landlord ordered to allow her to assign or sublet the rental unit because the landlord's permission has been unreasonably withheld. During

the hearing the tenant explained that her sister, with whom she formerly occupied the rental unit had returned to the United Kingdom. She said that her request to have her sister's name replaced on the tenancy agreement with that of her new roommate, C.G. was unreasonably rejected by the landlord.

Analysis

Residential Tenancy Policy Guideline #19 states;

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and a new agreement is typically entered into by the original tenant and the sub-tenant...disputes between tenants and landlord regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the *Act* does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the *Act*.

The use of the word 'sublet' can cause confusion because under the *Act* it refers to the situation where the original tenant moves out of the rental unit and a has a subletting agreement with a sub-tenant. 'Sublet' is also used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. In determining if a scenario such as this is a sublet as contemplated by the *Act*, the arbitrator will assess whether or not the relationship between the original tenant and third party constitutes a tenancy agreement and a landlord/tenant relationship. *If there is a landlord/tenant relationship*, the provisions of the *Act* apply to the parties. If there is no landlord/tenant relationship, the *Act* does not apply.

The tenant explained that she was seeking to replace her sister who had vacated the rental unit with a person that she had a good relationship with. She stated that she had inquired with the landlord about subletting the rental unit but that her plans had changed and she instead intended to reside in the unit on a full time basis while she attended school nearby. The tenant acknowledged moving one of the two former tenants of #107 into her rental unit without the landlord's permission, but she argued that this was not a sublet, but rather a roommate.

Based on the facts presented at the hearing and agreed upon by the parties, it is evident that the tenant has allowed occupant C.G. to reside in her unit. The question is therefore, whether or not the tenant was acting as an agent for the landlord, and whether or not a landlord/tenant relationship was established between the parties.

I do not find that the tenant has sublet her rental unit based on the details of *Residential Policy Guideline #19*. The guideline states, *unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Act.* No evidence was presented by either party that the tenant was acting as agent on behalf of the landlord, nor was any evidence presented by either party that the tenant did not intend to remain in the rental unit.

As noted above, the *Guideline* details a scenario very similar to the one present in this matter. It says, the arbitrator will assess whether or not the relationship between the original tenant and third party constitutes a tenancy agreement and a landlord/tenant relationship. *If there is a landlord/tenant relationship, the provisions of the Act apply to the parties. If there is no landlord/tenant relationship, the Act does not apply.*

I do not find that a landlord/tenant relationship exists in this case because the tenant remains in the rental unit and was not acting as agent for the landlord. As no landlord/tenant relationship exists, the *Act* does not support a definition of subletting, and the tenant's roommate is to be considered only an occupant/roommate, with no rights or responsibilities under the *Act*. Accordingly, because the tenant has not sublet the residential premises, I find the tenant successful in her application to cancel the landlord's 1 Month Notice to End Tenancy.

The tenant has also applied for an Order directing the landlord to allow her to assign or sublet the rental unit because the landlord's permission has been unreasonably withheld.

Policy Guideline #19 also examines the issue of Assignment and Sublet. It notes, "a tenant may assign or sublet their interest in a tenancy agreement only with the prior written consent of the landlord...in the case of a tenancy agreement under the *Act*, the landlord cannot unreasonably withhold consent if the tenancy agreement is for a fixed-term of six months or more...the *Act* does not specifically refer to month-to-month

tenancies. An Arbitrator may find that a landlord has acted reasonably for withholding consent to assign a month-to-month tenancy, unless the tenant can demonstrate a compelling reason why the landlord should agree to the assignment.”

Based on the oral testimony presented at the hearing, and the tenant’s written submissions, I do not find that the tenant has presented sufficient reasons why the landlord should be directed to allow her to assign or sublet the rental unit. At the hearing, the landlord explained that they had concerns about one of the former occupants of #107, who was now residing as an occupant/roommate of the tenant. I find that these concerns are valid regarding past issues with the tenant’s occupant/roommate and I find that the landlord is under no obligation under the *Act* to allow the tenant to assign or sublet her rental unit. For these reasons, this portion of the tenant’s application is dismissed.

As the tenant was partially successful in her application, she may recover the \$100.00 from the landlord. In lieu of a monetary order, and pursuant to section 72 of the *Act*, the tenant may withhold \$100.00 on **one** occasion from a future rent payment.

Conclusion

The tenant’s application to cancel the landlord’s 1 Month Notice to End Tenancy for Cause is successful. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant’s application for an Order directing the landlord allowing her to assign or sublet the rental unit is dismissed.

The tenant may withhold \$100.00 from a future rent payment on **ONE** occasion in satisfaction for a return of the filing fee.

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 11, 2017

Residential Tenancy Branch