

Decision

Dispute Codes: OPC, CNC, MNR, MNDC, FF

Introduction

This hearing dealt with two applications: i) by the landlord for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; ii) by the tenant for cancellation of the notice to end tenancy for cause. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether either party is entitled to the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the original one year fixed term of tenancy commenced on April 1, 2002. Subsequently, a written tenancy agreement was entered into on a month-to-month basis commencing April 1, 2007. Currently, rent in the amount of \$1,400.00 is payable in advance on the first day of each month. A security deposit of \$675.00 was collected at the outset of tenancy.

The landlord issued a 1 month notice to end tenancy for cause dated June 25, 2010. A copy of the notice was submitted into evidence. The date shown on the notice by when the tenant must vacate the unit is July 31, 2010. The reason shown on the notice for its issuance is as follows:

Tenant has assigned or sublet the rental unit / site without landlord's written consent.

During the hearing the landlord testified that rent has now been paid in full for July and August. Accordingly, I consider that the aspect of the landlord's application concerning a monetary order as compensation for unpaid rent is withdrawn.

The evidence is that the tenant sublet the upstairs portion of the unit effective from sometime in January 2008, while she herself resided in the basement. The tenant did not dispute the landlord's testimony that the tenant did not request the landlord's permission to sublet. Further, the tenant did not dispute the landlord's testimony that the landlord did not provide the tenant with written consent to sublet.

Analysis

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 34 of the Act speaks to **Assignment and subletting**, and provides in part:

34 (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

Section 47 of the Act addresses **Landlord's notice: cause**, and provides in part:

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]*;

Based on the documentary evidence and testimony of the parties, I find that the tenant sublet a portion of the unit without first obtaining the landlord's written consent.

Accordingly, I find that as the landlord has established the existence of cause to end the tenancy, the landlord is entitled to an order of possession.

As the landlord has succeeded in her application, I find the landlord is entitled to recover the filing fee by way of withholding \$50.00 from the tenant's security deposit.

Following from all of the above, the tenant's application to cancel a notice to end tenancy is hereby dismissed.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Tuesday, August 31, 2010**. This order must be served on the tenant.

Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby order that the landlord may withhold **\$50.00** from the tenant's security deposit in order to recover the filing fee.

DATE: August 19, 2010

Dispute Resolution Officer