



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC CNR FF

Preliminary Issues

At the outset of the hearing the parties confirmed the 1 Month Notice to End Tenancy dated January 1, 2011 was issued for cause and not for end of employment. The Tenants confirmed they wished to amend their application to change it from requesting to cancel the Notice issued for end of employment to read to cancel a Notice issued for cause. Their request to cancel the Notice issued for unpaid rent remains the same.

The 1 Month Notice document has both reasons listed as its title (For Cause and For End of Employment) which can be confusing for participants when completing their applications for dispute resolution. Both parties are aware of the reasons selected for issuing the Notice therefore neither party would be prejudiced by the Tenants' request to amend the application. Based on the aforementioned I approve the Tenants' request to amend the application to include the request to cancel a Notice issued for cause, pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to cancel a Notice to end tenancy for cause, to cancel a Notice to end tenancy for unpaid rent, and to recover the cost of the filing fee from the Landlords.

Service of the hearing documents, by the Tenants to the Landlords, was done in accordance with section 89 of the *Act*, sent via registered mail on January 8, 2011. Mail receipt numbers were provided in the Tenants' evidence. The Landlords confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Tenant's breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, have the Landlords met the burden of proof for issuing the 1 Month Notice to end tenancy for cause?
3. If so, have the Landlords met the burden of proof for issuing the 10 Day Notice to end tenancy for unpaid rent?

Background and Evidence

The Landlords denied receiving copies of the Tenants' evidence. The Tenants testified the evidence was sent to the Landlords via registered mail on January 14, 2011. A valid Canada Post tracking number was provided in the Tenants' testimony which confirms the package was sent January 14, 2011, and notification of attempted delivery and pick up information was left on January 19, 2011. Based on the aforementioned I find the Landlords have been sufficiently served with copies of the Tenants' evidence, in accordance with section 90 of the Act, despite them not picking up the registered mail package.

The Landlords confirmed they did not submit documentary evidence in response to the Tenants' application for dispute resolution.

The parties entered into a fixed term tenancy agreement effective July 1, 2010, which is set to switch to a month to month tenancy after June 30, 2011. Rent is payable on the last day of the month in the amount of \$1600.00 plus \$33.00 for cable. The parties paid a security deposit of \$800.00 on June 1, 2010 and a pet deposit of \$100.00 on April 1, 2010. The Tenants have occupied the main floor of the rental unit since April 1, 2010 and entered into a new agreement as of July 1, 2010 when they rented the entire house (main floor and basement suite).

The Occupant testified that he has resided in the rental property since December 1, 2010 and that he had a telephone conversation with the Landlord and Tenants on November 30, 2010 where he introduced himself to the male Landlord and requested permission to occupy the rental property. He states the male Landlord said it was fine that he move in. No paperwork has been received from the Landlords to add him as a tenant. His rent is \$475.00 each month which he paid to the male Tenant on November 23, 2010 and December 28, 2010.

The Agent testified the 1 Month Notice to End Tenancy was issued for repeated late payment of rent and because the Tenants have assigned or sublet the rental unit without the Landlords' written permission. She confirmed rent is due on the last day of the previous month. She stated the following is an account of when they paid their rent late:

Rent Due Date	Date of Payment	Amount Paid
July 31, 2010	August 4, 2010	\$600.00
July 31, 2010	August 6, 2010	1,000.00
September 30, 2010	October 1, 2010	1,635.00
November 30, 2010	December 1, 2010	1,300.00
November 30, 2010	December 2, 2010	185.00
December 31, 2010	January 6, 2011	1,200.00
December 31, 2010	January 11, 2011	285.00

The Agent confirmed the Landlords attended the rental unit on November 16, 2010 because the Regional District of their area requested an inspection of the property. They were required to remove the stove and shower from the lower suite so the Landlords offered the Tenants a onetime rent reduction of \$150.00 for the month of December 2010 to compensate for the inconvenience of removing the stove and shower.

The female Landlord testified they had another friend act as their Agent to serve the two Notices. The 1 Month Notice was served personally to the male Tenant on January 1, 2011 at 6:15 p.m. and the 10 Day Notice was served personally on January 7, 2011 at 6:30 p.m. The male Tenant confirmed receipt of both Notices to end tenancy.

The male Landlord testified that he met the Occupant on November 16, 2010 and he had already moved into the rental unit as indicated by his possessions that were in the unit on that date. The Landlord denies having a conversation with the Tenants and Occupant on November 30, 2010 and denies agreeing to a permanent reduction in rent. The \$150.00 reduction was only for the month of December 2010.

The male Tenant testified they had a verbal agreement with the male Landlord to pay their November 30, 2010 rent late. He disputed the Landlord's testimony and argued that he did have a telephone conversation with the Landlord where the Landlord agreed to allow the Occupant to move in and to permanently lower the rent. He stated that the Landlord was to attend the rental unit sometime in the New Year and provide them with

a new written agreement with the Occupant added as a tenant and that lists the lowered rent.

The Tenant stated that they have never paid their rent late and he referred to his documentary evidence which consisted of copies of his bank statements which prove transfers were made to the Landlord's account for rent. He stated that his August 31, 2010 rent was paid when he transferred \$1,000.00 to the Landlord's bank account and gave the Landlord \$635.00 cash, in person at the rental unit. He did not receive a receipt from the Landlord for this cash payment. He confirmed his December 31, 2010 payment was late because the banks closed early and they were not open during the holiday season. He paid \$1,200.00 on January 6, 2011 and another \$285.00 on January 11, 2011 so he is of the opinion that their rent for January 2011 is now paid in full because of the \$150.00 rent reduction they had the verbal agreement for.

The male Landlord advised that initially they thought they could work with the Tenants if they had a situation where they needed to pay their rent late. He told the Tenants that they need to be informed if they were having a situation and would not be able to pay on time. However, things started to get out of hand and the Tenants began to pay their rent later and later. When they would call looking for the rent the Tenants began to hang up the phone on his wife. He said when he did not receive the December 31, 2010 rent it was the final straw. He was at the bank on December 31st and he knows that they were open for their regular business hours and did not close early for the holidays. He confirmed he was at the rental unit to pick up some articles out of their workshop at the end of August; however he denies the Tenants giving him any cash towards their rent. He confirmed they issued the 10 Day Notice without checking to see if a bank transfer was made. He later determined the Tenants paid their rent January 6, 2011 the day before the 10 Day Notice was issued.

In closing the Agent wanted to confirm there was a memo transfer of \$635.00 for the balance owed on the August 31, 2010 rent therefore the Tenants would not have paid the Landlord cash and which supports they paid that rent late. The Agent stated that they were requesting an Order of Possession.

Analysis

I have carefully reviewed the testimony and documentary evidence which included, among other things, copies of various Tenants' bank statements, bank receipts, proof of payment for municipal utilities, the 10 Day Notice to end tenancy, the 1 Month Notice to end tenancy, and a copy of the tenancy agreement.

A sublet or sublease is a lease given by the tenant or lessee of the residential premises to a third person where the Tenant no longer occupies the rental property. A sublease or sublet must be for a period of time that is less than the Tenant's original lease period otherwise it is considered an assignment.

In this case I find that the evidence supports that the Tenants have allowed another person to reside in the rental unit with them and this person is now an Occupant. After careful review of the tenancy agreement I find there are no limitations to the number of occupants.

Section 14(2) of the Act provides a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment. That being said, a written tenancy agreement cannot be changed based on a verbal agreement, all changes must be in writing and confirmed with the parties signatures.

Section 26 (1) of the Act states a tenant must pay rent when it is due under the tenant agreement, whether or not the landlord complies with the Act, regulation or tenancy agreement. Based on the aforementioned the Tenants are required to pay their rent of \$1,633.00 (\$1,600.00 + 33.00 cable) in full no later than the last day of each month.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenants in a manner that complies with the Act. This Notice was not served to the Tenants until January 1, 2011, therefore the effective date of the Notice automatically corrects to February 28, 2011, pursuant to section 53 of the Act.

The *Residential Tenancy Policy Guideline #38* stipulates that when a tenant pays rent late it does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. Three late payments are the minimum number to justify issuing a notice to end tenancy under these provisions.

The testimony and the Tenants' evidence supports the Tenants paid their August 31st, September 30th, October 31st, November 30th, and December 31, 2010 rents late, in breach of Section 26 of the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the 1 Month Notice to end tenancy for cause. Based on the aforementioned I hereby dismiss the Tenants' application to cancel the 1 Month Notice without leave to reapply.

Section 55 of the Act provides that an Order of Possession must be provided to a landlord if a tenant's request to dispute a Notice to End Tenancy is dismissed and the landlord makes an oral request for an Order of Possession during the scheduled hearing. Therefore I approve the Landlord's request for an Order of Possession effective February 28, 2011.

The Tenants have not been successful with their application; therefore I decline to award recovery of the filing fee.

Conclusion

The Landlords' decision will be accompanied by an Order of Possession effective **February 28, 2011 at 1:00 p.m.** after service upon the Tenants. This Order must be served upon the Tenants and may be enforced through Supreme Court as an Order of that Court.

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: January 27, 2011.

Residential Tenancy Branch