

DECISION

Dispute codes

CNC

Introduction

This hearing was convened in response to an application filed on February 14, 2011 by the tenant to cancel a 1 Month Notice to End Tenancy for Cause (the Notice to End). The notice to End dated February 02, 2011 contained the reasons as:

- *Tenant has allowed an unreasonable number of occupants in the unit*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so*
- *Tenant has assigned or sublet the rental unit without landlord's written consent.*

At the outset of the hearing the landlord verbally requested an Order of Possession in the event that I uphold the landlord's Notice to End.

Both the tenant and the landlord appeared in the conference call and each participated in the hearing via submissions, prior evidence, and affirmed / sworn relevant testimony. The parties were also permitted to discuss and resolve their dispute.

For this type of application, the onus is on the landlord to prove the Notice to End was issued for valid reasons, and that at least one reason must constitute sufficient cause for the Notice to be valid. The landlord is not required to prove all reasons stipulated for ending the tenancy. The tenant disputes the notice to end on the basis that they have not breached their tenancy agreement in any way, as alleged by the landlord.

Issue(s) to be decided

Is there sufficient cause to end the tenancy?

Is the landlord entitled to an Order of Possession?

Background and evidence

This tenancy began February 22, 2006. Rent is in the amount of \$800 per month. The tenant provided document evidence including the Notice to End. The landlord provided a quantum of document evidence including the tenancy agreement, and a '*breach letter*' to the tenant dated January 18, 2011.

The landlord testified that, in their determination, the tenant has sublet or assigned the rental unit to another individual without the landlord's permission, and in so doing

purports that they have also breached several components of the tenancy agreement, in part, as follows:

- 6. The premises are to be used for private residential purposes only and for no more than 1 person(s)
- 16. . . . And will not assign without leave. And will not sub-let without leave. . .
- 21. The tenant shall not sublet the premises.

The landlord testified that they came to know on their own that another new individual began to occupy the rental unit on or about November 08, 2010. The landlord's information led them to conclude that the tenant had vacated and had sublet or assigned the rental unit to the new individual. The landlord provided a letter to the tenant dated January 18, 2011 in which the tenant was notified of the landlord's determination and assertions that the tenant has vacated the unit and sublet it; or, in the alternative, exceeded the maximum number of tenants per suite (in this matter – 1). The landlord provided that the tenant responded to the landlord in an e-mail dated January 19, 2011 that they had not vacated and that some of their belongings were still in the suite; and, that they occasionally still resided in the rental unit, but were primarily residing out of town due to work and personal considerations. The tenant confirmed to the landlord that the new individual was a room-mate with whom he now shared the rental unit, and that in his past, "7 plus years" experience as a tenant (5 years of this tenancy) this was never an issue and management was always aware.

The landlord testified as to their suspicions, feelings, and speculation of circumstances and events, which they claim circumstantially led them to conclude that the applicant had vacated the rental unit and that a new individual had somehow assumed the tenancy – by assignment or sublet. The parties agreed that the tenant had not discussed this arrangement in advance and the landlord confirmed they learned of the new occupant on their own. The tenant strongly denied that he has vacated, and testified that he has simply acquired an additional occupant to the rental unit as a room-mate. The parties discussed at length the viability of an agreement to continue the tenancy under the standing agreement with provision for the addition of the room-mate and for an upward adjustment in the amount of rent. However, the parties were not able to come to agreement on the amount for the additional rent.

Analysis

On the preponderance of the evidence and sworn testimony provided in this matter, I have reached a decision.

I have carefully considered the landlord's claim that the tenant breached a material term of the tenancy agreement and that the tenant did not correct the breach within a reasonable time after written notice to do so. It must be noted that Residential Tenancy Policy defines a material term as *a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement*. It is not enough to simply rely upon a term being in the agreement for it to be a material term. It falls to the person relying on the term, in this case the landlord, to present arguments supporting the proposition that the referenced term is a material term. I have considered the landlord's submissions that this tenancy agreement states clearly that the rental unit is for no more than one (1) person and I have considered the tenant's testimony they allowed an additional person unknown to the landlord to also reside in the rental unit and that they did not seek permission for such an arrangement. In determining if term #6 of the tenancy agreement is a *material term*, I find as follows:

- 1). I find that Term #6 or any other portion of the tenancy agreement does not prohibit guests or temporary occupancy by additional persons..
- 2). I find that the tenancy agreement does not provide for what will happen in the event that a new individual joins the tenancy; but, I find the last term of the tenancy agreement states that,
27. Any changes to this agreement shall only be effective if made in writing and accepted by the landlord.
- 3). I find that the tenancy agreement was executed by the applicant (the tenant) as the sole person intended to reside in the rental unit, and as in agreement with the contents of the agreement, and,
- 4). I find that term #6 does not meet the definition of an *unconscionable* term as defined in the Regulations (oppressive or grossly unfair to a party)

As a result of all the above, I find that Term #6 of the tenancy agreement is a *material term* of the agreement, and that the introduction of an additional individual as an occupant in the rental unit is a breach of that term. I find that the tenant was given written notice to correct the breach and that it was available to the tenant to do so by confirming the tenancy as originally agreed, or resolve the dispute by means of one of the landlord's options, or by any other means so mutually agreed, (27) . . . *in writing and accepted by the landlord*. The tenant determined, instead, to assert their position that they were still the primary tenant, and did neither of the above. I find that the 14 days between the written notice to correct the breach and the date of the Notice to End as being a *reasonable time* to correct the breach.

On the basis of the landlord's reason for ending the tenancy for : *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so* I find that the landlord has met the burden of proof in showing

they had *sufficient* cause to end this tenancy for this reason. Having made this finding, I decline to consider the other reasons provided in the Notice to End.

Section 55 of the Act, in part, states as follows:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession,
and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

Therefore, I find the landlord's 1 Month Notice to End Tenancy for Cause dated February 02, 2011 is valid. I uphold the landlord's Notice to End and the tenant's application to set aside the landlord's Notice to End is effectively **dismissed** without leave to reapply. The landlord is hereby entitled to an **Order of Possession** as orally requested and the tenancy will come to an end as Ordered.

Conclusion

The tenant's application is **dismissed**. I grant an **Order of Possession** to the landlord effective **March 31, 2011**. This Order must be served on the tenant. Should the tenant then 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.

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*.
