



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call to deal with the tenants' application for an order cancelling a notice to end tenancy for cause, and to recover the filing fee from the landlords for the cost of this application.

Both tenants and one of the landlords attended the conference call hearing, all parties gave affirmed testimony, and were given the opportunity to cross examine each other on their testimony.

The tenants provided an evidence package to the Residential Tenancy Branch and to the landlords, which was not provided within the time prescribed by the Rules of Procedure however the landlord did not oppose inclusion of that evidence. Therefore, the evidence of the tenants and all information and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling a notice to end tenancy for cause?

Background and Evidence

This fixed-term tenancy began on August 15, 2010 and expires on April 30, 2011. The tenants still reside in the rental unit, which is a large commercial type of residence with 24 beds rented as a residential unit. Rent in the amount of \$2,250.00 per month is payable in advance on the 1st day of each month, and there are no rental arrears.

At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$4,500.00. The parties appeared before a Dispute Resolution Officer who ordered that the overpayment of the security deposit be applied to rent, and the undisputed evidence of the parties is that the landlord currently holds \$1,125.00 in trust from that security deposit.

The landlord testified that 2 tenants signed a tenancy agreement, a copy of which was provided in advance of the hearing. He further testified that only one of the named tenants signed the Application to Rent. He stated that the tenancy agreement provided for 7 people to reside in the house, and there are now 22 people residing there. He stated that the house is big enough to accommodate 22 people, but had he known the unit would be used for multiple families, the rent would have been higher, and he does rent the house for large gatherings and collects a higher rent.

The landlord further testified that rent has been late every month since the tenancy began.

On February 23, 2011 the landlord issued a 1 Month Notice to End Tenancy for Cause, a copy of which was also provided in advance of the hearing. He stated that he personally served a person who was apparently an occupant of the rental house on February 23, 2011. The notice states that the tenant is repeatedly late paying rent; the tenant has allowed an unreasonable number of occupants in the unit/site; and the tenant has assigned or sublet the rental unit/site without the landlord's written consent, and contains an expected date of vacancy of April 1, 2011.

The landlord stated that the Application to Rent contains a statement that 2 adults and 5 children under 18 would be occupying the unit, for a total of 7 occupants. The landlord asked for an Order of Possession.

One of the tenants testified that the Application to Rent that contained the statement that 7 occupants would be residing in the rental unit wasn't for this rental unit. He stated that it was for a rental property that they had considered renting in another town, but emailed the wrong copy to the landlord.

Analysis

Firstly, dealing with the notice to end the tenancy, I find that the notice complies with Section 52 of the *Residential Tenancy Act*. I find that the effective date, to comply with Section 47 (2) of the *Act*, should state March 31, 2011 because rent is payable on the 1st day of the month. Section 53 of the *Act* states that if the landlord or tenant gives notice to end a tenancy effective on a date that does not comply with the *Act*, the notice is deemed to be changed to the date that complies with the required notice period. I find that the effective date is changed to March 31, 2011.

Because the landlord was ordered to allow the tenants to reduce rent for the overpayment of the security deposit by another Dispute Resolution Officer, I cannot find that the tenants have been repeatedly late paying rent.

With respect to assigning or subletting the rental unit without the landlord's written consent, it is important that the parties understand the definitions, and I refer to the Residential Tenancy Policy Guideline 19, which states as follows:

"Assignment is the act of transferring all or part of a tenant's interest in or rights under a lease or tenancy agreement to a third party, who becomes the tenant of the original landlord"

"A sublease is a lease given by the tenant or lessee of residential premises to a third person (the sub-tenant or sub-lessee). A sublease can convey substantially the same interest in the land as held as is held by the original lessee, however such a sublease must be for a shorter period than the original lease in order that the original lessee can retain a reversionary interest in the property. The sub-tenant does not take on any rights or obligations of the original tenancy agreement that are not contained in the sub-agreement, and the original lessee remains the tenant of the original lessor, and is the landlord of the sub-tenant."

In this case, the tenancy clearly was not assigned and the tenants did not give the lease to a third person. The tenants simply allowed other tenants to move in without the landlord's consent. I do find, however, that the tenants signed an Application to Rent that specified 7 people residing the rental unit. I do not accept that the tenants signed the application form and emailed it to the wrong landlord. I agree with the landlord that the tenants have allowed an unreasonable number of occupants to reside in the rental unit without the landlord's consent. I also find that specifying that 7 people would reside in the unit and then having 22 people reside there presents more wear and tear on the rental unit, and the landlord has established sufficient grounds for ending the tenancy, and therefore the tenants' application must be dismissed.

Section 55 of the *Act* states that 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 the landlord makes an oral request at the hearing and the director dismisses the tenant's application or upholds the landlord's notice. Having found that the landlord's notice to end the tenancy complies with Section 52 of the *Act*, and having found that the landlord has established sufficient grounds for ending the tenancy, an Order of Possession in favour of the landlord must be issued.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective March 31, 2011 at 1:00 p.m. If the tenants are served with the Order of Possession and 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*.

Dated: March 18, 2011.

Residential Tenancy Branch