



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

CNC

Introduction

The hearing was scheduled in response to the an Application for Dispute Resolution, in which the Applicant has made application to set aside a Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Applicant submitted documents to the Residential Tenancy Branch, copies of which were served to the Respondent. The Respondent acknowledged receiving two packages of evidence on two separate days from the Applicant. As these documents were served to the Respondent they were accepted as evidence for these proceedings.

The Respondent submitted documents to the Residential Tenancy Branch. The Agent for the Respondent stated that none of the documents submitted to the Residential Tenancy Branch were served on the Applicant in relation to these proceedings, although the Tenant has previously been given some of the documents submitted to the Residential Tenancy Branch by the Respondent. As none of the Respondent's documents were served on the Applicant in accordance with rule 4.1 of the Residential Tenancy Branch Rules of Procedure, none of those documents were accepted as evidence for these proceedings.

Issue(s) to be Decided

The issues to be decided are whether the Notice to End Tenancy that was served pursuant to section 47 of the *Act* should be set aside.

Background and Evidence

The Respondent, who is the Landlord, and the Tenant agree that this tenancy began on December 01, 2009; that the Landlord, the Tenant, and the Tenant's son entered into a written tenancy agreement; and that the written tenancy agreement required the Tenant and his son to pay rent of \$1,200.00 by the first day of each month.

The Occupant stated that she moved into the rental unit on April 01, 2010 and that the Agent for the Landlord had been informed that she was moving into the rental unit. The Agent for the Landlord agreed that he had been informed that the Occupant was moving into the rental unit approximately 6-8 months ago and that he was agreeable to that arrangement. He stated that neither he nor the Landlord entered into a tenancy agreement with the Occupant.

The Landlord and the Tenant agree that a One Month Notice to End Tenancy for Cause was left at the door of the rental unit sometime in March of 2011, although neither party can recall when the Notice was left/located. The Notice to End Tenancy declared that the Tenant and the Occupant must vacate the rental unit by April 30, 2011. The Notice to End Tenancy indicated that the Landlord was ending the tenancy because the tenant has allowed an unreasonable number of occupants in the unit; because the tenant or a person permitted on the property has put the landlord's property at significant risk; because the tenant has engaged in illegal activity that has, or is likely to, jeopardize the lawful right or interest of another occupant or the landlord; and because the tenant has assigned or sublet the rental unit without landlord's written consent.

In support of his belief that the Tenant has allowed an unreasonable number of occupants in the unit, the Landlord stated that when he was in the rental unit in the summer of 2010 he noticed that there were people sleeping in all three bedrooms of the home and in the room he refers to as the t.v. room. He stated that based on his observations while he was making repairs to the rental unit in the summer of 2010 and his recent observations while he was on the residential property, he believes there are six people living in the rental unit.

The Occupant stated that she resides in the rental unit with the Tenant, the Tenant's son, and another female occupant. She stated that the Tenant's son's girlfriend occasionally stays overnight at the unit. She stated that the Agent for the Landlord was previously advised that the other female occupant was living in the rental unit.

The Agent for the Landlord stated that the tenancy agreement stipulates who can occupy the rental unit and that no other persons can occupy the unit unless they have the written consent of the Landlord. He stated that he believes there are at least one other male and one other female living in the rental unit. The Agent for the Landlord stated that he was advised that another female would be living in the rental unit, whose name he does not recall, although he believed that this female would move out when the Occupant moved in. He repeatedly stated that the Tenant did not have his permission to have all these individuals living in the rental unit.

The Landlord and the Tenant agree that there are three bedrooms and a "television room" in the rental unit. The Occupant stated that she and the Tenant use the "television room" as their bedroom.

In support of his belief that the Tenant or a person permitted on the property by the Tenant has put the landlord's property at significant risk and/or because the Tenant has

engaged in illegal activity that has, or is likely to, jeopardize the lawful right or interest of another occupant or the Landlord, the Landlord stated that he believes the Tenants have been growing marijuana on the residential property.

The Landlord based his belief that the Tenants were growing marijuana on the residential property, in part, because when he wished to inspect the garage in the summer of 2010 the Tenant told him he would have to wait approximately one week. He stated that when he did inspect the garage, approximately one week later, he noted that plastic had been used to cover one of the garage doors and he could smell something that he believed was marijuana.

The Landlord based his belief that the Tenants were growing marijuana on the residential property, in part, because he found a pot containing a marijuana plant on the rear of the property that the Tenant told him may have belonged to his son.

The Landlord based his belief that the Tenants were growing marijuana on the residential property, in part, because the RCMP told him they had received a report that marijuana was being grown on the residential property. He stated that he does not believe the RCMP found evidence to substantiate that report.

The Agent for the Landlord stated that the Landlord recently received a letter from the City of Chilliwack, dated April 04, 2011, in which the Landlord was informed that the property had been recently inspected and that the inspector had determined that there was "evidence of a previous marijuana grow operation". Although this letter was submitted to the Residential Tenancy Branch it is important to note that the letter itself has not been considered, as it was not accepted as evidence for these proceedings. He stated that the City of Chilliwack advised him that dried marijuana leaves were located in the house and that a "bong", which he understands is used for smoking marijuana, was observed during this inspection.

The Agent for the Landlord stated that the letter informed the Landlord that an "Un-Safe to Occupy" Notice will be placed on the residence.

The Tenant stated that the rental unit was inspected by the fire department and the owner advised him that there had been a marijuana grow operation in the rental unit prior to the Tenant moving into the rental unit.

In support of his belief that the Tenant has assigned or sublet the rental unit without Landlord's written consent, the Agent for the Landlord reiterated that the Tenant has people living in the rental unit without the Landlord's permission.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant and his son entered into a tenancy agreement with the Landlord.

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord, or his agent, was aware that the Occupant was living in the rental unit, however there is no evidence to suggest that the Landlord and the Occupant had a verbal or a written tenancy agreement for this rental unit.

The Residential Tenancy Branch Policy Guidelines suggest that when a tenant allows a person who is not a tenant to move into the premises the new occupant has no rights or obligations under the tenancy agreement unless all parties agree to enter into a tenancy agreement that includes the new occupant as a tenant. I concur with this policy suggestion. As the Occupant did not enter into a tenancy agreement with the Landlord, I find that she is not a tenant and she has no rights or obligations in regards to this tenancy.

Section 47(1)(c) of the *Act* stipulates that a landlord may end a tenancy by giving notice to end the tenancy if there are an unreasonable number of occupants in a rental unit. Based on the evidence presented by the Occupant, I find that the Tenant, the Tenant's son, and a second female occupant are living in the rental unit, and that the Tenant's girlfriend's son is sometimes an overnight guest at the rental unit. I find that the Landlord submitted no evidence to corroborate his statement that there are six people living in the rental unit and I cannot, therefore, conclude that there are six people living in the rental unit.

On the basis of the undisputed evidence presented at the hearing, I find that this is a three bedroom home and that there is a fourth bedroom that could be used as a bedroom. I find that there is no evidence to suggest that it is unreasonable to have four people living in a house with three bedrooms. Even if I were to accept that there were six people living in this house, I still would not find that amount to be unreasonable given the number of bedrooms in the house. In my view, it is fairly typical to have 4 people living in a three bedroom home and it is not unusual to have 6 people living in a three bedroom home. On this basis, I find that the Landlord has not established that there are an unreasonable number of occupants in the rental unit. I therefore find that he does not have grounds to end this tenancy pursuant to section 47(1)(c) of the *Act*.

It is important to note that the Landlord believes the number of people living in the home is unreasonable, in part, because it contravenes a term of the tenancy agreement that requires the Landlord to consent, in writing, to allow persons not named on the tenancy agreement to live in the rental unit. Without determining whether this term of the tenancy is enforceable, I find that it is not relevant to section 47(1)(c) of the *Act*. In the event that the Landlord wishes to end this tenancy because the Tenant has breached a material term of the tenancy agreement, the Landlord would have to serve the Tenant with written notice to correct the alleged breach; the Landlord would have to give the

Tenant an opportunity to correct the alleged breach; the Landlord would have to serve notice to end this tenancy pursuant to section 47(1)(h) of the *Act*; and, if that notice was disputed, the Landlord would have to establish that the Tenants had breached an enforceable term of the tenancy agreement.

Section 47(1)(d)(iii) of the *Act* stipulates that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the property has put the landlord's property at significant risk. Section 47(1)(e)(iii) of the *Act* stipulates that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has engaged in illegal activity that has, or is likely to, jeopardize the lawful right or interest of another occupant or the landlord.

While an illegal marijuana grow operation would, in most circumstances, be grounds to end this tenancy pursuant to section 47(1)(d)(iii) or 47(1)(e)(iii) of the *Act*, I find that the Landlord submitted insufficient evidence to conclude that this Tenant or a person permitted on the property by the Tenant has operated a marijuana grow operation on the property. While both the Landlord and the Tenant agree that the rental unit was inspected and it was determined that there had been a marijuana grow operation in the rental unit, I find that the Landlord submitted insufficient evidence to establish when the grow operation had been operated. I find that the Landlord submitted insufficient evidence to refute the Tenant's statement that the grow operation was in the rental unit prior to his tenancy and that he had not operated a grow operation in the rental unit.

In reaching the determination that the Landlord had submitted insufficient evidence to establish that the Tenant had operated a marijuana grow operation in the rental unit I was influenced, in part, by the absence of any evidence from the RCMP that shows a grow operation had been operated by the Tenant(s).

In reaching the determination that the Landlord had submitted insufficient evidence to establish that the Tenant(s) had operated a marijuana grow operation in the rental unit I was influenced, in part, by the absence of photographs of the rental unit that would provide me with the opportunity to independently assess the condition of the rental unit, which might have helped determine how recently marijuana had been grown in the rental unit.

In reaching the determination that the Landlord had submitted insufficient evidence to establish that the Tenant had operated marijuana grow operation in the rental unit I was influenced, in part, by the absence of a Condition Inspection Report that would establish the condition of the rental unit at the start of the tenancy.

In reaching the determination that the Landlord had submitted insufficient evidence to establish that the Tenant had operated a marijuana grow operation in the rental unit, I placed little weight on the Landlord's testimony that the City of Chilliwack had located a "bong" or dried marijuana leaves in the rental unit. Although the presence of these items may establish that the Tenant or his guests consume marijuana, it does not establish that they operated a marijuana grow operation. I have no evidence to suggest

that consuming marijuana places the Landlord's property at risk or that it jeopardizes the lawful right or interest of another occupant or the Landlord.

In reaching the determination that the Landlord had submitted insufficient evidence to establish that the Tenant had operated a marijuana grow operation in the rental unit, I placed little weight on the Landlord's testimony that the Tenant delayed an inspection of the garage for approximately one week in the summer of 2010. While any attempt to delay an inspection is reason to suspect there is a problem in a rental unit, the Landlord had the right to inspect the rental unit, pursuant to section 29 of the *Act*, by providing the Tenant with written notice that he wished to inspect the property in 24 hours. Had the Landlord inspected the unit with 24 hours notice he may have been able to corroborate his suspicions, if a grow operation was present.

In reaching the determination that the Landlord had submitted insufficient evidence to establish that the Tenant had operated a marijuana grow operation in the rental unit, I placed little weight on the Landlord's testimony that he found a marijuana plant in a pot on the residential property. I have no evidence to suggest that growing a single marijuana plant jeopardizes the lawful right or interest of another occupant or the Landlord.

Section 47(1)(i) of the *Act* stipulates that a landlord may end a tenancy by giving notice to end the tenancy if the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent. I find that the Landlord has failed to establish that he has grounds to end the tenancy pursuant to this section of the *Act*.

Assignment is the act of transferring all or part of a tenant's interest or rights under a tenancy agreement to a third party, who becomes the tenant of the original landlord. As none of the people occupying the rental unit, other than the Tenant or his son, have entered into a tenancy agreement with the Landlord, I find that the tenancy has not been assigned.

A sublease is a lease given by the tenant to a third party, which confers the rights and obligations of the tenancy to the third party for the period in which the original tenant has the right to possess the property. As there is no evidence to show that the Tenants transferred their rights and obligations to other people living with them in the rental unit, I find that the Tenants have not sublet the rental unit.

Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47 of the *Act*, I grant the application to set aside the One Month Notice to End Tenancy and I find that this tenancy will continue until it is ended in accordance with the *Act*.

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: April 08, 2011.

Residential Tenancy Branch