



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OLC, FF

Introduction

The tenant applied to cancel a Notice to End Tenancy for Cause, Orders the landlord comply with the Act and filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony provided.

Preliminary Matters

The tenant served his evidence to the landlord's agent approximately 1 week prior to the hearing; the tenant could not recall the date. The employee served with evidence has since terminated employment with the landlord. The landlord present at the hearing stated she did not have the evidence. As the tenant could not provide the date upon which the evidence was given to the previous agent, I determined the evidence would not be considered.

The landlord served the tenant their evidence submission to the person who they believe is currently sub-leasing the tenant's unit; the identity of the person served was not established. The landlord also sent the evidence to the tenant's address shown on cheques that are given to the landlord for rent. The tenant testified that the address on the cheques was that of the care home his mother had moved into years ago and he continues to use the cheques from a joint bank account. Therefore, in the absence of evidence of service to the address where the tenant resides or to an adult who apparently resides with the tenant, the landlord's evidence was set aside.

Both parties were at liberty to make oral submissions.

Upon my request the landlord submitted a copy of a tenancy agreement that was said to have been signed by the tenant with a third party. The landlord agreed to provide the tenant with a copy of that document, which was to be made available at the rental unit building office within a short period of time following the hearing. I have referenced this document in reaching my decision.

The tenant indicated several matters of dispute on his application and confirmed that the main issue to deal with during this proceeding was the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together.

Therefore, I dealt with the tenant's request to set aside or cancel the Notice to End Tenancy for Cause and I dismissed the balance of the tenant's claim with liberty to re-apply.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause issued on April 9, 2012, be cancelled?

Is the tenant entitled to filing fee costs?

Background and Evidence

This tenancy commenced twenty years ago; rent is currently \$800.00 per month, due on the first day of each month. The unit is approximately 500 square feet. There was no dispute that clause 16 of the written tenancy agreement signed by the parties prohibits the tenant from sub-letting his unit without prior written permission of the landlord.

The landlord and the tenant agreed that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenant has assigned or sublet the rental unit without written consent. The tenant confirmed receipt of the Notice on April 12, 2012 and the landlord acknowledged that as the date of service to the tenant.

The Notice indicated that the tenant must vacate the rental unit effective May 9, 2012, as he had sublet his rental unit without the written consent of the landlord.

The landlord testified that the tenant signed a tenancy agreement with an individual, J.L., for rental of the tenant's unit from January 19, 2012, to March 31, 2012, in the sum of \$1,195.00 per month due on the first day of each month.

The landlord was in possession of a written residential tenancy agreement signed by the sub-tenant individual and the tenant, that indicated that \$400.00 pro-rated rent was paid for January, 2012; this notation was signed by the parties. The agreement was signed on January 19, 2012, by the tenant and the sublet individual J.L. and acknowledged that an occupant P.H. would also reside in the unit. On January 19, 2012, the sub-tenant was paid a deposit in the sum of \$600.00. The agreement was signed by the tenant and the sub-tenant and provided the landlord's current telephone number, as it appears on his application for dispute resolution. In the absence of a copy of the agreement at the hearing, the landlord was asked to read the complete agreement.

The tenant stated that the tenancy agreement obtained from the alleged January to March sub-tenant is a fraud and that he has no idea why anyone would forge a tenancy agreement in his name. The tenant stated he lived with the person identified as a sub-tenant in the agreement and did not deny that J.L. and a female had lived in the unit. The tenant stated that J.L. had been a friend who had arrived from Spain.

The landlord was informed by the previous agent of the building that when vacant units were being shown in the building toward the end of March a female attended at the building and asked to view unit 408; this is the tenant's unit. The potential renter said

she was responding to an advertisement placed on a popular web site, for rental of a furnished unit; #408.

The landlord submitted that the tenant was advertising in anticipation of the end of the fixed term he had signed with sub-tenant J.L. and was now attempting to locate a new sub-tenant. The tenant now has a male residing in the unit; J.M. The landlord has not obtained a copy of any residential tenancy agreement for this arrangement.

The tenant stated he had been experiencing problems with the previous on-site agent for the landlord; that they were bullies and that their behaviour caused him to reside recently with a friend. The tenant confirmed that since the agents have now ceased employment with the landlord he will be residing at the rental unit and that this is his residential address.

The tenant agreed that he currently has a friend, J.M. who is living with him in the rental unit. The tenant denied that he has sub-let the unit to J.M.

The tenant complained that the landlord's previous agents had taken the keys for the building from his friend; the landlord stated the tenant is free to request a replacement key if it is required.

When the landlord became aware of the sublet agreement the tenant had created and that the tenant had appeared to be in the process of seeking another sub-tenant, the landlord issued the Notice to end tenancy for cause.

The tenant submitted copies of BC Hydro bills in an attempt to demonstrate that he resides at the unit. The address on the bills indicates the rental unit address.

The tenant's witness did not testify and I accepted that he would submit that the tenant was staying away from the unit temporarily. The witness provided the tenant with a written statement alleging that the sub-tenant J.L. was going to cause problems for the tenant and would somehow retaliate against the tenant.

Analysis

Residential Tenancy Branch policy describes a sub-tenancy as an agreement given by the tenant of the residential premises to a third person; the sub-tenant.

The tenant made submissions that he in fact lived with the person who the landlord has identified as a current sub-tenant. At the start of the hearing I had accepted the tenant's affirmed testimony that he did not receive the landlord's evidence submission, as he was not currently living in the unit, due to conflict with the agent of the landlord who had been employed at the building. However, in light of the tenant's testimony later in the hearing, I have determined that the tenant was offering 2 versions of his residence status, one; that he was not currently residing in the unit, thus avoiding service of documents and, two; that he was indeed residing in the unit the J.M.

I am inclined to believe that the tenant had an interest in avoiding service of the landlord's evidence. Either his residential address is at the rental unit or it is not. If I accept the tenant's testimony that he lives at the unit with J.M. and is only staying with a friend on a temporary basis, then I could have determined he was indeed served with the landlord's evidence, as provided by section 88 of the Act; via an adult (J.M.) who

apparently resides with the tenant. Either the tenant lives with J.M. at the rental unit or he does not. This conflicting submission caused me to question the truth of the tenant's submissions.

I had initially accepted that the tenant was not residing at the rental unit and therefore, he could not have received the landlord's evidence from J.M.; however, this would only be the case if indeed the tenant resided elsewhere. Staying with a friend on a temporary basis would not allow the tenant to avoid service of documents to the address where he claims to reside; the rental unit.

This testimony led me to question the veracity of the tenant's submissions in relation to the status of the individual who now resides in the rental unit and to question the tenant's submission that he did not sign a fixed term tenancy agreement that commenced on January 19, 2012.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In the circumstances before me, I find the version of events provided by the landlord to be highly probable given the conditions that existed at the time. Considered in its totality, I favour the evidence of the landlord over that of the tenant.

Upon my request, a copy of the sublet residential tenancy agreement given to the landlord by sub-tenant J.L. was submitted and reviewed. This agreement was compared to the tenant's application for dispute resolution, in order to assess the tenant's submission that the document must be fraudulent. The tenant's application for dispute resolution included a considerable amount of hand writing, which was used for comparison to the hand writing and signatures on the sublet agreement.

From my assessment of the 2 documents, I determined, on the balance of probabilities, that the tenant had sublet his rental unit in breach of clause 6 of his written tenancy agreement with the landlord. I have rejected the tenant's submission that the sublet agreement was created by the sub-tenant; a person the tenant described as a friend with whom he had allowed to live in the unit. The tenant could not provide any reasonable submission as to why J.L. would have taken the time to create a false tenancy agreement for a fixed term tenancy.

Further, I found the landlord's testimony that their agent present at the building in March met an individual who had seen the unit advertised for rent on a popular internet site; compelling. This aligns with the end of the fixed term agreement signed in January, 2012, with the sub-tenant.

Therefore, I find that the tenant did issue a fixed-term tenancy agreement that commenced on January 19, 2012, which ended on March 31, 2012, for rent in the sum of \$1,195.00, pro-rated January rent paid and a deposit paid in the sum of \$600.00. Even if I had not requested and reviewed the copy of the residential sub-tenancy agreement, I would have determined that the landlord's testimony was more reliable than that of the tenant's. There was no evidence before me that the landlord had a hand in creating a false tenancy agreement; nor have I accepted that the sub-tenant fraudulently created the written agreement. From the evidence before me and the testimony of the parties, I find the suggestion that the sub-tenant forged the residential tenancy agreement lacks any substance.

Therefore, after considering all of the submissions, I find that the landlord has provided sufficient evidence to show that the tenant has sublet the rental unit from January 19, 2012 to March 31, 2012, in the absence of written consent of the landlord and that the Notice to end tenancy for cause issued on April 9, 2012, is of full force and effect. The tenant's application to cancel the Notice is dismissed.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to May 31, 2012.

Conclusion

As I have determined that the landlord has submitted sufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47 of the Act, I find that the Notice to end tenancy for cause issued on April 9, 2012, is of full force and effect.

The tenant's application to cancel the Notice is dismissed.

The balance of the tenant's application is dismissed with leave to reapply.

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: May 11, 2012.

Residential Tenancy Branch