



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The facts are not in dispute. The rental unit is subsidized by BC Housing and the tenant's portion of the rental payment is \$595.00. The tenancy agreement specifically provides that only those listed on the tenancy agreement as occupants are permitted to reside in the rental unit, that any guests who reside in the rental unit in excess of 14 days in a 12 month period are considered occupants and that because the tenant is eligible for a rent subsidy, only the occupants listed on the agreement may reside in the unit and the landlord may withhold consent to sublet the rental unit.

The tenant went overseas for a period of several months and sublet the unit to a third party for \$1,000.00 per month in rent. On September 29, 2012, shortly after the tenant returned to Canada, the landlord served her with a one month notice to end tenancy for cause (the "Notice"). The Notice alleged a number of infractions, including that the tenant had sublet the rental unit without the landlord's written consent.

The tenant testified that she knew that she was not permitted to sublet the unit, but did not believe that she could be evicted for doing so. The tenant acknowledged having told the landlord that she did not ask for permission to sublet the unit because she knew that the landlord would not consent.

Analysis

Section 34(1) of the Act provides that a tenant may not sublet a rental unit without the landlord's written consent. The tenancy agreement very clearly prohibits subletting and clearly identifies the point at which guests become occupants.

Although the tenant may not have been aware that a breach of the tenancy agreement could result in the ending of her tenancy, she acknowledged that she was aware that subletting was prohibited. In any event, the tenant is responsible to familiarize herself with her legal obligations.

I find that the landlord has cause to end the tenancy and for this reason I decline to set aside the Notice.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant 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.

The Notice takes effect on October 31, 2012, but at the hearing, the landlord agreed to give the tenant an additional month in order to prepare herself for moving. The enclosed order is effective on November 30, 2012.

Conclusion

The tenant's claim is dismissed. The landlord is granted an order of possession effective November 30, 2012.

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: October 29, 2012

Residential Tenancy Branch