



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AGB Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Tenant's application filed April 4, 2013: AS; CNR; DRI; OLC; FF

Landlord's application filed April 24, 2013: OPR; OPB; MNR; MNSD; FF

Introduction

This Hearing was convened on May 2, 2013, to consider cross applications. The Tenant seeks to cancel a Notice to End Tenancy for Unpaid Rent; to dispute an additional rent increase; an Order that the Landlord comply with the Act, regulation or tenancy agreement; an Order that the Landlord allow the Tenant to assign or sublet the rental unit; and to recover the cost of the filing fee from the Landlord

The Landlord seeks an Order of Possession; a Monetary Order for unpaid rent; to retain the security deposit in partial satisfaction of its monetary award; and to recover the cost of the filing fee from the Tenant.

At the end of the May 2, 2013, Hearing the Landlord's agent RB ("RB") attempted to call the Landlord's agent AB ("AB") so that AB could give testimony. RB was not successful in contacting AB. The allotted time for the Hearing ran out before final submissions could be made. Therefore, the matter was adjourned. This is the reconvened Hearing. An Interim Decision was provided on May 6, 2013, and corrected on June 13, 2013, which should be read in conjunction with this Decision. A copy of the corrected Interim Decision is enclosed with this Decision.

The parties gave affirmed testimony at the Hearings.

Issues to be Decided

- Has the Landlord unreasonably refused to allow the Tenant to sublet or assign the rental unit?
- Is the Tenant in arrears of rent for January, February and March, 2013?
- Should the Notice to End Tenancy for Unpaid Rent issued April 2, 2013 (the "Notice") be upheld or canceled?

Background and Evidence

On May 2, 2013, with the Landlord's consent, I ordered that the Tenant provide the Landlord with \$2,360.00 immediately, representing payment towards April and May's rent (\$1,180.00 towards each month). I explained that this payment would be for use and occupancy only of the rental unit until this matter had been fully heard and a decision reached. In other words, payment of these funds did not reinstate the tenancy. AB acknowledged receipt of this payment and stated that the Landlord also received payment from the Tenant in the amount of \$1,180.00 towards June's rent, for use and occupancy only.

AB gave the following testimony:

- AB is the CEO of the corporate Landlord.
- The Landlord's practice is to go through the whole tenancy agreement with new tenants before the agreement is signed. In particular, it is emphasized that all requests from the Tenant to the Landlord must be in writing and deposited in the Landlord's mailbox. E-mails are not considered to be sufficient. It is also emphasized that rent payments must be made by preauthorized debit, which is a material term of the contract, pursuant to clause 44 of the tenancy agreement.
- He had two conversations with the Tenant. Both times, the Tenant was rude, disrespectful and arrogant.
- The first conversation was with respect to additional occupants. He wrote to the Tenant approving additional occupants and confirming the adjustment to the rent. A copy of the letter, dated March 1, 2013, is filed under tab 6 of the Landlord's evidence package.
- The second conversation took place after the Landlord received the Tenant's Notice of Hearing package.
- Contrary to the Tenant's testimony, at no time was AB made aware that there were only 2 people at any one time living in the rental unit. At no time did the Landlord agree that the Tenant could sublet the rental unit. The Landlord's permission was for additional occupants only.

The Tenant gave the following reply:

- The property owner was aware that there were only 2 occupants in the rental unit at any one time.
- He always considered the arrangement to be a sublease.

Analysis

Has the Landlord unreasonably refused to allow the Tenant to sublet or assign the rental unit?

Clause 16 of the tenancy agreement states, in part:

ASSIGN OR SUBLET. The Tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this tenancy agreement is for a fixed length of 6 months or more, the landlord must not unreasonably withhold consent.

The Tenant submitted that he asked for permission to sublet the rental unit. A copy of a fax from the Tenant was provided in evidence by the Landlord, who testified that the fax was received on February 15, 2013. The fax indicates that the Tenant requests “permission for **additional occupants** at my apartment” and that he understands that they “have each completed Applications for Occupancy” with the Landlord.

Based on the testimony and evidence given, I do not find that the Landlord unreasonably refused to allow the Tenant to sublet or assign the tenancy agreement. I find that the Tenant did not request permission to sublet or to assign the tenancy agreement; rather, he requested permission for additional occupants only. It is important to note that such permission was requested after the two occupants had been living in the rental unit for 6 weeks.

Is the Tenant in arrears of rent for January, February and March, 2013?

The Tenant submitted that he should not be charged the additional rent of \$125.00 per month because there were only two people occupying the rental unit at any time and the tenancy agreement allowed for him to have a roommate.

Clause 13 of the tenancy agreement states, in part:

ADDITIONAL OCCUPANTS: ... A tenant anticipating an additional person to occupy the rental unit must promptly apply in writing for permission from the landlord for such person to become an approved occupant.

The tenancy agreement also provides that, subject to the provisions of clause 13, rent will increase by \$125.00 per month for each additional occupant not named in the tenancy agreement and that the increase is effective from the date of such occupancy.

Based on the Tenant’s testimony, I find that there were two other occupants living in the rental unit on January 1, 2013, and that they were not named in the tenancy agreement. However, the Landlord seeks compensation for only one of the occupants (\$125.00

each month for the months of January, February and March, 2013), in accordance with Clause 13 and the rent increase provision.

I find that the Landlord is entitled to \$125.00 per month for an additional occupant for the months of January, February and March, 2013. Therefore, rent for those months was \$1,305.00, which includes the \$15.00 parking fee.

The Tenant paid only \$1,180.00 for each of the months of January, February and March, 2013, and therefore I find that the Tenant owes rent in the amount of **\$375.00** to the Landlord for those months.

Should the Notice to End Tenancy for Unpaid Rent issued April 2, 2013 (the "Notice") be upheld or canceled?

I find that the Notice is a valid notice to end the tenancy. Section 26 of the Act requires a tenant to pay rent when it is due. The Landlord's letter dated March 1, 2013, was clear that rent for April, 2013, would be increased by \$375.00 to reflect the additional occupant charges that were outstanding. The Tenant did not pay full rent when it was due on April 1, 2013.

The Tenant received the Notice on April 2, 2013, and therefore I find that the tenancy ended on April 12, 2013. The Tenant has paid for use and occupancy of the rental unit until June 30, 2013, and therefore I find that the Landlord is entitled to an Order of Possession **effective 1:00 p.m., June 30, 2013.**

Security Deposit, Late fees and filing fees

The Tenant has been unsuccessful in his application and I find that he is not entitled to recover the cost of the filing fee from the Landlord.

The Landlord's application had merit and I find that it is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

The Landlord applied for late fees in the total amount of **\$50.00** for late payment of April and May rent. There is a clause in the tenancy agreement allowing for late fees of \$25.00, which is in compliance with the regulations. Therefore, I allow this portion of the Landlord's claim.

The Landlord has established a total monetary award of \$475.00, calculated as follows:

Unpaid rent	\$375.00
Late fees for April and May, 2013 (\$25.00 x 2)	\$50.00
Recovery of the filing fee	<u>\$50.00</u>

TOTAL

\$475.00

The Tenant paid a security deposit in the amount of \$580.00 at the beginning of the tenancy. Pursuant to the provisions of Section 72 of the Act, I order that the Landlord apply a portion of the security deposit in satisfaction of its monetary award. The balance of the security deposit, in the amount of \$105.00 must be administered in accordance with the provisions of the Act.

Conclusion

The Tenant's application is dismissed in its entirety.

The Landlord is hereby provided with an Order of Possession effective **1:00 p.m., June 30, 2013**. This Order must be served upon the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The Landlord has established a monetary award in the total amount of **\$475.00**, which includes the unpaid rent, late fees and recovery of the filing fee. The Landlord may deduct its award from the \$580.00 security deposit. The balance of the security deposit, in the amount of \$105.00, must be administered in accordance with the provisions of 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: June 13, 2013

Residential Tenancy Branch

