



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MINTON APARTMENTS c/o COLLIERS INTERNATIONAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 26, 2013, by the Tenant to cancel a Notice to end tenancy issued for cause and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Upon confirmation of receipt of evidence the Landlords testified that they sent the Tenant their evidence by registered mail. They provided the tracking information and stated that they had checked the Canada Post website and had confirmed that the Tenant signed for the package.

The Landlords indicated that they did not receive copies of the Tenant's evidence. The Tenant initially stated that he did not have the registered mail tracking information because his friend sent the shipment for him while he was on vacation. Later during the hearing the Tenant indicated he had received an e-mail from his friend with the tracking information and argued that the package had been sent to the Landlord's head office. Based on the foregoing, I find the Landlord is deemed served with the Tenant's evidence in accordance with section 90 of the Act.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy be upheld or cancelled?
2. If cancelled, did the Landlord make an oral request for an Order of Possession?

Background and Evidence

The parties confirmed the tenancy began in December 2004 and switched to a month to month tenancy after November 30, 2005. Rent is currently payable on the first of each month in the amount of \$1,012.00 and on November 27, 2004 the Tenant paid \$400.00 as the security deposit.

The Property Manager, hereinafter referred to as Landlord, testified that she began working for the Landlord in mid August 2013. She began working on the Tenant's file when she received their service centre report logs that had complaints from a neighboring tenant. The neighbor had been complaining about numerous people residing in the Tenant's apartment and indicated that the Tenant was renting out his unit as a vacation rental for over two years now. The tenant complained that there is so much traffic of people in and out she does not feel safe in her own home.

The Landlord researched the internet and found the Tenant's advertisement which included photos of himself with his dog, his name, and the interior and location of his apartment, which she provided copies of in her evidence. Upon viewing this site she contacted the building manager and instructed him to contact the Tenant and tell him to stop renting his property. She argued that she had selected the sections on the Notice that referred to the Tenant engaging in illegal activity because his activity was a breach of their tenancy agreement.

The building manager, hereinafter referred to as Agent, testified that he began watching more closely and he found people having access to secured areas who did not live there. He approached people in the secured laundry room and around the building to ask who they were. Each of these people refused to show him identification and every one of them told him that they were guests of the Tenant. He witnessed them inside secured areas which require having the key fob. The fob allows entry into the building, laundry room, and other common areas.

The Agent stated that near the beginning of August 2013 he approached the Tenant directly and informed him that they now know he has been renting out his unit as a vacation rental. He indicated that he had seen new people in the building who were

moving in and out of his apartment each week and that the Tenant needs to stop this immediately. The Agent stated that the Tenant did not say a word; he simply refused to respond as he smiled at him and kept walking away from the Agent.

Upon review of the 1 Month Notice the Tenant confirmed receipt of the Notice on August 19, 2013 and a second copy shortly afterwards by registered mail.

The Agent and Landlord argued that the Notice was issued because the Tenant has breached the tenancy agreement by operating a vacation rental business without the consent of the Landlord. They also alleged that the Tenant has placed the other tenants' safety at risk as well as placing the Landlord's property at risk by giving numerous strangers unsupervised access to all secured areas of the building. They also indicated that these vacation renters have been moving in and out at all hours of the day and night which cause noise disruptions and affects the quiet enjoyment of others.

The Tenant stated that he did not initially understand why he was issued the 1 Month Notice as he had not seen the case against him until he returned from his vacation on October 10, 2013, and saw the Landlord's evidence. He denies that the Landlord approached him and denied ever having a conversation with the Agent about having people in his apartment. He stated that he has had many friends who stay as his guests, even his girlfriend, and he is always with them. He denied giving his key fob to any of his guests and argued on several occasions that he simply buzzes his guests into the building with his cell phone. He indicated that he had the buzzer programmed to ring on his cell phone.

Upon review of the Landlord's evidence, which included copies of the vacation rental advertisement and many reviews from past guests, the Tenant confirmed that the photos were of him and his dog. He denied renting out his rental unit and argued that anyone could have placed the advertisement on the website.

The Agent pointed to their evidence which included photos from their security camera of one of the Tenant's guests standing at the front door. He said that on that particular day he saw the Tenant arrive a few minutes earlier and he went up to the apartment as if to make sure everything was okay. Then he came downstairs and let the new guest in with his suitcases and took him up to the apartment. The Tenant left a few minutes later, leaving his guest unattended. He claimed that the guest had the key fob as he was seen again in the laundry room area which can only be accessed with the key fob.

In closing, the Landlord pointed out that the advertisement is still active on the vacation rental website. She noted that in the first couple of weeks of October the Tenant had changed his name on the website. She noted that the site also had a calendar showing available and booked dates. One of the booked dates coincided with a date that she was refused access to the unit. She stated that they attended the hearing to ask for an Order of Possession.

The Tenant argued that he denied access on that date because the Landlord changed the pre-arranged time and showed up several hours earlier. He said he does not trust these people and then began to speak about an incident when the Agent began questioning his guests in the elevator. He said when his guests later told him he was very upset, but confirmed he did not discuss this with the Agent. He suggested that these people might be anybody's friends and then reiterated that he buzzes people in with his cell phone and does not give his guests the key fob.

Analysis

After careful consideration of the aforementioned and the documentary evidence submitted by each party I favor the evidence of the Landlords over the evidence from the Tenant. The Landlords' evidence was forthright, credible, and supported by documentary evidence of the vacation rental advertisement and reviews which list the Tenant's unique first name as well as photos of him, his dog, and the interior of his apartment. They also provided security camera photos which display the Tenant arriving at the building and a few moments later attending the front door to let a guest in who was pulling a suitcase.

I favored the Landlords' evidence because the Tenant contradicted his own testimony on several occasions. First, he argued that he "never" gave out the key fob and that he "always" buzzed his guests into the building; yet, the security camera photos clearly show him meeting someone at the front door who had been standing outside for a few moments, whom he brought into the building. Secondly, people who told the Agent they were the Tenant's guests were found inside secured areas such as the laundry room, without the presence of the Tenant. Therefore, they had to have had the fob to gain access to those areas. Thirdly, he argued that he has "never" allowed his guests to be alone in the building and in secured areas; however, he testified about an incident where the Agent approached one of his guests and was asking questions, which caused the Tenant to get upset when he heard about it later.

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 is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the Tenant's explanation of someone else listing his apartment for vacation rental to be improbable. The photos of the interior are specifically staged to show rent-ability and are not common photos of someone's home as there are no personal photos or possessions. I found the Tenant to be in a denial mode where he denied everything, including the Agent's conversation with him, despite the presence of the Landlord's overwhelming evidence. I do not accept Tenant's assertion that he did not know why he was being served the Notice to end tenancy. Rather, I find that a reasonable person ought to have known his actions of operating a vacation rental business, without prior approval, were a breach of his tenancy and certainly the subject of this dispute. Simply put, he had gotten away with it for so long that I found his attitude was almost the result of a sense of entitlement to do as he wished regarding anyone he called his guests.

I do not find it a mere coincidence that the advertisement was changed to show a different name in early October 2013 because the Tenant admitted to returning to the country on October 10, 2013. This is the first time he said he saw the Landlords' evidence which included his vacation rental advertisement. Therefore, it is reasonable to conclude that he thought to change the name on the advertisement to avoid accountability by not listing his name, which is unique or rare. Rather, I find the Landlords' explanation that the Tenant has been renting out his unit as a vacation rental to be probable given the circumstances presented to me during the hearing.

For all the aforementioned reasons, and on a balance of probabilities, I find as follows:

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenant in a manner that complies with the Act. The Notice was issued listing the following reasons:

The Tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord

Tenant has engaged in illegal activity that has, or is likely to:

- Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- Jeopardize a lawful right or interest of another occupant or the landlord

Section 47(1)(h) of the Act stipulates that a landlord may end a tenancy if the tenant has failed to comply with a material term of the tenancy and has failed to correct the situation within a reasonable time after the landlord to do so.

In his written submission the Tenant argued that the Notice was invalid because the Landlord had not issued him a written warning. In this case the Notice does not indicate that the Tenant has breached a material term of the tenancy and I did not hear evidence pertaining to breach of a material term. Therefore, I do not accept the Tenant's assertion that this tenancy cannot be ended because he was not provided prior written notice.

Section 47(1)(d) 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 residential property by the tenant has (i) significantly interfered with or unreasonable disturbed another occupant or the landlord of the resident property; (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord's or another occupant.

I find that the Tenant's actions of conducting a business of renting out his apartment to numerous vacationers to be placing other tenants' safety and security at significant risk. I further find that these actions are also placing the Landlords' property at risk. I make these findings in part because when a landlord rents out a unit they have a fiduciary duty to ensure that any new tenant's background has been thoroughly checked out so they will not pose a risk to other tenants, their homes, and the landlord's property. In this case the Tenant is allowing numerous people, unsupervised access to the entire building and secured common areas, without the Landlord conducting proper background checks and without the Landlords' prior written approval. The constant flow of different people in and out of the Tenant's unit has significantly interfered with other tenant's security, causing unreasonable disturbance to their right to quite enjoyment and to feel safe in their own homes.

Upon consideration of all the evidence presented to me, I find the Landlords had valid reasons for issuing the Notice and therefore the Notice is upheld and the Tenant's application to set aside the Notice is dismissed.

As the Tenant has not been successful with his application I decline to award recovery of the filing fee.

Section 55 of the Act provides that an Order of Possession must be provided to a landlord if a tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Accordingly I award the Landlord an Order of Possession.

Having upheld the Notice to end tenancy, I find the remainder of the Tenants' application to be moot as this tenancy is ending.

Conclusion

I HEREBY DISMISS the Tenants' application, without leave to reapply.

I HEREBY ISSUE the Landlord an Order of Possession effective two days upon service. This Order is legally binding and must be served upon the Tenant.

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 16, 2013

Residential Tenancy Branch

