



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC

Introduction

This hearing dealt with an application by the tenant for orders setting aside a 1 Month Notice to End Tenancy for Cause; compelling the landlord to comply with the Act, regulation or tenancy agreement; and granting the tenant a monetary order. Both parties appeared and had an opportunity to be heard.

The landlord had filed five pages of written evidence that had not been served on the tenant. As a result, this evidence was excluded from consideration.

Issue(s) to be Decided

- Does the landlord have grounds, within the meaning of the *Residential Tenancy Act*, for ending this tenancy?
- Is the tenant's roommate entitled to a set of keys from the landlord?
- Is the tenant entitled to return of the key deposits paid?

Background and Evidence

This tenancy commenced December 1, 2009 as a one year fixed term tenancy and has continued as a month-to-month tenancy since the expiry of the term. Although neither party filed a copy of the written tenancy agreement as part of their evidence the parties agreed that the tenancy agreement listed the tenant and PK as co-tenants. PK died in 2001 and the tenant has continued under the original tenancy agreement. . As of the date of the hearing the monthly rent, which is due on the first day of the month, is \$825.00. In addition to collecting a security deposit, the landlord also collected a \$75.00 key deposit from the tenant and from PK.

On September 16, 2013, the landlord issued and served a 1 Month Notice to End Tenancy for Cause. The reasons stated on the notice are:

- The tenant or a person permitted on the property has significantly interfered with or unreasonable disturbed another occupant or the landlord.
- The tenant has assigned or sublet the rental unit without the landlord's written consent.

The parties both testified that since PK died, the tenant has had a number of roommates. The tenant testified that he charges his roommates half of the rent and half of the utilities. He collects their share of the rent from them and pays the full rent to the landlord. He also collects a security deposit from the landlord.

The landlord testified that after PK died the tenant spoke to her about prospective roommates and she agreed to the first three. When she was approached about the third roommate she told the tenant that this would be the last one she would approve. This particular sharing situation was unhappy and short-lived; ending in January of 2013.

Since then the tenant has had other roommates but has not asked the landlord for permission in advance.

There was a particular problem with the roommate before the tenant's current roommate. There was an incident between the tenant and his roommate which resulted in the police being called by the neighbours at 3:00 am. This roommate moved out before the end of July with the keys to the unit and the building, which he has never returned.

On July 31, 2013, the tenant wrote the landlord advising that because that roommate had taken the keys with him he had had the dead bolt to the rental unit rekeyed and had given a copy of the key to one of the building managers. He asked that another replacement key for the building be supplied to him, at cost.

The landlord responded with a letter stating that the tenancy agreement allowed a tenant to assign or sublet the rental unit only with the written consent of the landlord and that if he wanted to assign or sublet the unit he must ask for the landlord consent in advance and, if the landlord approved, there would be a new tenancy agreement.

On September 6 the tenant again wrote to the landlord. This letter advised he had a new roommate and again asked for a key to be provided to his roommate.

The landlord responded by issuing and serving the notice to end tenancy.

With respect to the allegation that the tenant or his roommates have unreasonable disturbed the landlord or other occupants of the building the tenant says that problems with his roommates have been isolated incidents. He said the problems related to the third roommate were that the roommate had quit taking his medications and had a psychotic episode.

He also filed letters of support from the tenants who live nearest to him stating that the tenant had not disturbed them. The landlord responded that of the three people who signed letters of support, two had only been living in their units since September 1.

With respect to the keys the tenant says he spoke to the locksmith who does the work for this building and was advised that the replacement cost of the front door key is about \$15.00. The tenant argues that the \$75.00 deposit collected at the commencement of the tenancy is excessive and asks that both deposits be returned to him.

The tenant also asks for an order that his roommate be provided with keys for the building at the actual replacement cost.

Analysis

Does the landlord have grounds, within the meaning of the Residential Tenancy Act, for ending this tenancy?

The onus is on the landlord to prove the grounds stated on the notice to end tenancy on a balance of probabilities.

Section 34(1) of the *Act* states that a tenant must not assign a tenancy agreement or sublet a rental unit without the landlord's written consent.

Residential Tenancy Policy Guideline 19: Assignment and Sublet and the *Guide for Landlords and Tenants in British Columbia* both provide an explanation of the term "subletting". Each describe a scenario where the tenant conveys substantially the same interest in the rental unit as he or she hold to another person but for a shorter period of time than set out in the tenancy agreement between the landlord and the tenant. Based on that definition I find that the tenant's arrangements with his roommates are not subletting within the meaning of the *Act*.

The only evidence of the tenant disturbing the landlord or other residents of the building is a police attendance in July. It is notable that the notice to end tenancy was not served at that time but only several weeks after that roommate had move out of the building and the parties were fighting about whether the tenant could have roommates or not. This is not sufficient evidence of a tenant significantly interfering with or unreasonable disturbing the landlord or other occupants.

The 1 Month Notice to End Tenancy for Cause dated September 16, 2013, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

Is the tenant's roommate entitled to a set of keys from the landlord?

One of the legal consequences of the finding that this arrangement is not a subletting is that the roommate is not a tenant within the meaning of the Act and therefore is not entitled to any of the rights and privileges granted to tenants under that legislation, including any obligation by the landlord to provide him with a key. Accordingly, the tenant's application for an additional set of keys is dismissed.

If the tenant wants his roommate to have the same privileges as a tenant, the roommate must apply for and be approved as a tenant by the landlord. Once the roommate is added to the tenancy agreement he will have a direct relationship with the landlord and the *Residential Tenancy Act* will apply to that relationship.

Is the tenant entitled to return of the key deposits paid?

First of all, the tenant claim for return of the key deposit paid by PK is dismissed. That payment was made by PK and only his estate may make any claim for reimbursement.

Section 6(1) of the *Residential Tenancy Regulation* states that if a landlord provides a tenant with a key or other access devise the landlord may charge a fee that is refundable upon return of the key or access devise and is not greater than the actual cost of replacing the key or access devise. The only evidence regarding cost was the tenant's description of a conversation with a locksmith – hearsay evidence – that the replacement cost is \$15.00 per key. There was no direct evidence from the locksmith. This evidence is not sufficient to establish the tenant's claim on a balance of probabilities. This claim is dismissed with leave to re-apply.

Conclusion

- a. The 1 Month Notice to End Tenancy for Cause dated September 16, 2013, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.
- b. The tenant's application for an additional set of keys is dismissed.
- c. The tenant's claim for return of the key deposit paid by him is dismissed with leave to re-apply.

As the tenant did not have to pay a fee to file this application no order for repayment will be made.

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: November 12, 2013

Residential Tenancy Branch