



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPC FF

For the tenant: CNC FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for an order of possession for cause, and to recover the filing fee.

The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause, and to recover the filing fee.

The tenant and the landlord attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The landlord confirmed receiving the tenant’s evidence and that she had the opportunity to review the tenant’s evidence prior to the hearing. The tenant confirmed that the landlord’s evidence was mailed to the mailing address provided by the tenant in the tenant’s application; however, the tenant stated that as she was currently calling in from the United States, that she did not have all the evidence in front of her during the hearing as her mother was unable to scan and email her each page of evidence. I find that the tenant was sufficiently served under the *Act* as there was no dispute that the landlord served their evidence on time to the service address provided in the tenant’s application for dispute resolution. Based on the above, I find the parties were sufficiently served in accordance with the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

During the hearing, the parties mutually agreed to amend the landlord's application to reflect the current mailing address of the tenant, which is residential address of the tenant's mother. As a result, the landlord's application was amended to reflect the current mailing address of the tenant.

Issues to be Decided

- Should the 1 Month Notice be cancelled?
- Is the landlord entitled to an order of possession under the *Act*?

Background and Evidence

The parties agreed that the original tenancy agreement signed by the parties was submitted in evidence. The original tenancy agreement was signed by the parties on April 23, 2013 and was a fixed term tenancy of five months ending on September 30, 2012. The parties disputed what the landlord alleged to be a second tenancy agreement. Nevertheless, the parties did agree that a subsequent tenancy agreement was signed by the landlord on May 30, 2013, and by the tenant on May 31, 2013, and was for a fixed term of three months ending on August 30, 2013 and at the end of the tenancy, may continue on a month to month basis, or another fixed length of time.

Monthly rent of \$1,200.00 is due on the first day of each month. The tenant paid a security deposit of \$600.00 at the start of the tenancy which the landlord continues to hold.

The parties agreed that a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") alleging that the tenant has assigned or sublet the rental unit/site without the landlord's written consent dated September 09, 2013 was served on the tenant's door on September 09, 2013. The tenant stated that she received an e-mail from the sub-tenant who scanned the 1 Month Notice and e-mailed it to the tenant. The tenant could not recall the date she opened the e-mail from the sub-tenant. Nevertheless, the tenant did not dispute that she had received the 1 Month Notice by the deemed service date of September 12, 2013. The tenant disputed the 1 Month Notice on September 20, 2013. The 1 Month Notice was submitted in evidence by the landlord. The effective vacancy

date on the 1 Month Notice is October 31, 2013. The tenant stated that she is currently in the United States and that the sub-tenant continues to occupy the rental unit.

The parties agreed that a written sublease agreement referred to under Tab 8 of the landlord's evidence package was signed on June 2, 2013 for a fixed term of 3 months ending on September 1, 2013, which the landlord approved. The landlord stated that she only agreed to permit a sublet of the rental unit for a period of three months, and not longer. The tenant stated that a verbal agreement was made with the landlord to allow the sublet for six months, which the landlord disputed. The tenant confirmed that she did not submit any documentary evidence that supported that the landlord agreed to anything longer than a three month sublet.

The tenant referred to a tenancy agreement submitted in evidence which supports that the tenant entered into a tenancy agreement on May 31, 2013 with a sub-tenant for a fixed term of three months ending on September 1, 2013 that may continue on a month to month basis or another fixed length of time. The landlord stated that she did not agree to a sublet longer than three months which is supported by an e-mail dated July 22, 2013 under Tab 5D in the landlord's evidence package, which reads in part from the landlord to the tenant:

“...I would also like to inform you will not have my permission to sublet when the current sublet expires at the end of August...”

[reproduced as written]

The tenant referred to a letter submitted in her evidence from JV, which the tenant stated supported that the landlord agreed to a sublet for “at least 6 months”. The landlord disputed the letter from JV, stating that it did not accurately reflect the conversation when JV was present.

Analysis

Based on the documentary evidence and testimony of the parties, and on the balance of probabilities, I find the following.

I will first address the status of the tenancy agreement between the parties. The parties agreed that a subsequent tenancy agreement was signed by the landlord on May 30, 2013, and by the tenant on May 31, 2013, and was for a fixed term of three months ending on August 30, 2013 and at the end of the tenancy, may continue on a month to month basis, or another fixed length of time. There was no evidence presented that another fixed term tenancy was signed by the parties after May 31, 2013. As a result, I

find the tenancy agreement between the landlord and tenant automatically reverts to a month to month tenancy agreement under the *Act*.

The parties agreed that the tenant received the 1 Month Notice dated September 09, 2013 by the deemed service date of September 12, 2013, as the 1 Month Notice was posted to the tenant's door. The tenant confirmed that her sub-tenant scanned the two-page 1 Month Notice document and e-mailed it to her, however, the date she opened that e-mail could not be recalled by the tenant. The tenant disputed the 1 Month Notice on September 20, 2013. Based on the above, I find the tenant disputed the 1 Month Notice within the required 10 day timeline under section 47 of the *Act*.

Once a Notice has been disputed within the required timeline under the *Act*, the onus of proof reverts to the landlord to prove that the Notice is valid. Although the tenant alleges that a verbal agreement was made with the landlord to allow the tenant to sublet the rental unit for a period of six months, the landlord disputes that a verbal agreement was made. The sublease document submitted in evidence signed on June 2, 2013 supports that the tenant signed a sublease with the sub-tenant which ended on September 1, 2013.

The tenant provided a copy of a tenancy agreement which was signed by the tenant and the sub-tenant on May 31, 2013 which reverts to a month to month tenancy between the tenant and the sub-tenant after September 1, 2013. The landlord stated that she did not agree to sublet the rental unit for a term longer than three months.

I do not afford weight to the letter submitted by the tenant JV in my decision as a description from a third party does not outweigh the written sublease agreement submitted in evidence dated June 2, 2013 which is a fixed term sublease of three months. The landlord confirmed the June 2, 2013 sublease agreement was the only sublet that she agreed to, which is supported by the landlord's e-mail to the tenant dated July 22, 2013 described above.

Given the above, I find that the 1 Month Notice issued by the landlord and dated September 09, 2013 is valid. I am satisfied that the tenant sublet the rental unit for a term longer than what the landlord agreed to by entering into a tenancy agreement which is actually a month to month tenancy agreement with the sub-tenant as of September 1, 2013. Based on the above, **I dismiss** the tenant's application and **I uphold** the landlord's 1 Month Notice dated September 09, 2013.

The effective vacancy date of the 1 Month Notice is October 31, 2013. As a result, **I grant** the landlord an order of possession **effective two (2) days** after service on the

tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

As the landlord's claim had merit, **I grant** the landlord the recovery of their filing fee in the amount of **\$50.00**. **I authorize** the landlord to retain \$50.00 from the tenant's security deposit in full satisfaction of the recovery of their filing fee. As a result, **I find** the tenant's \$600.00 security deposit is now reduced to \$550.00, due to the \$50.00 filing fee granted to the landlord.

As the tenant's claim was dismissed, **I do not grant** the tenant the recovery of the tenant's filing fee.

Conclusion

The tenant's application has been dismissed.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord is authorized to retain \$50.00 from the tenant's security deposit in full satisfaction of the recovery of the landlord's filing fee. As a result, I find the tenant's \$600.00 security deposit is now reduced to \$550.00, due to the \$50.00 filing fee granted to the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 31, 2013

Residential Tenancy Branch

