



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Terra Crest Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, CNC, FF

Introduction

There are applications filed by both parties. The landlord seeks an order of possession as a result of a 1 month notice to end tenancy issued for cause and recovery of the filing fee. The tenant seeks an order to cancel a notice to end tenancy issued for cause and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have confirmed receipt of the notice of a hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the tenant entitled to an order cancelling the notice to end tenancy?

Background and Evidence

This tenancy began on December 1, 2004 on a month to month basis as shown by the landlord's submitted documentary evidence. The monthly rent is \$532.00 payable on the 1st of each month and a security deposit of \$266.00 was paid.

The landlord states that two 1 month notices to end tenancy issued for cause were served upon the tenant.

The first notice dated March 6, 2014 was posted to the rental unit door by the landlord's property manager, P.H. The notice displays an effective end of tenancy date of April 30, 2014 with two reasons for cause.

-Tenant has allowed an unreasonable number of occupants in the unit/site.

-Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord states that the tenant has allowed an unreasonable number of occupants and has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice was given to the tenant. The landlord states that this tenancy is as a result of an agreement with the previous owners for low cost housing for low income seniors as shown in the provided copy of the signed tenancy agreement in sections 1(b), 5(a), 6 and 7. The landlord states that when they took over a covenant was entered into with the previous owners, to maintain low cost housing for low income seniors. The landlord has provided a copy of the signed covenant. The landlord states that in two letters, the first dated November 28, 2011 (for which the landlord clarified that this was a typo and should read November 28, 2013). The tenant disputes this typo, but was clarified by the landlord's witness, P.H. the person who wrote the letters. P.H. stated that this was a typo and that the document was signed on November 28, 2013 and not 2011. Both parties confirmed that this letter and one dated January 23, 2014 as provided by the landlord that these "caution notices" were sent to the tenant which states, "You have another person living in your apartment. This is a breach of a material term of your tenancy agreement and Evangel Tower House Rules". Attached were the house rules which states in #5, "No persons other than those to whom the suite is assigned shall be allowed to reside therein. Rooms cannot be sublet....The Administrator must be notified in advance when guests are staying in the facility." The landlord specified that the tenant's son and girlfriend are occupying the rental. The tenant disputes this stating that her son does not live at the rental, but that he goes to the unit to take care of it. The landlord has provided copies of electronic logs for FOB access entry which was introduced by the landlord's witness, P.H. the property agent and a letter from a technician who retrieved the data has provided a letter which indicates his search for entries made by the tenant's son in and out of the property. The landlord states that the entries show that the tenant's son has made multiple entries on more than one occasion in one day that does not support the tenant's claim that the son is only visiting and taking care of the rental unit. The landlord points out that the logs show that the tenant and his girlfriend both have FOB access and the son is there every day. The landlord has provided copies of security camera photographs which show the tenant's son entering and leaving on multiple occasions using the FOB. The landlord has noted that in the logs it shows that the tenant's son on multiple occasions entering late at night and not leaving until the next morning. The tenant states that, "I asked him to stay as often as possible".

The second 1 month notice to end tenancy issued for cause dated March 21, 2014 was posted to the rental unit door on March 21, 2014. The notice provides two reasons for cause. This notice also provides for an effective end of tenancy date of April 30, 2014.

- Tenant is repeatedly late paying rent.
- Tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The landlord has withdrawn reason number 1 during the hearing, Tenant is repeatedly late paying rent for a reason for cause. As such, no further action is required for this portion of the application.

On the second reason for cause, the landlord states the tenant has allowed persons (her son and his girlfriend) to occupy the rental unit without written consent of the landlord and contrary to the house rules. The landlord states that the tenant before leaving the country to visit/take care of her relatives overseas failed to obtain written consent. The tenant disputes this stating that she tried and could not contact the landlord to notify him of her situation. The tenant states prior to leaving the country almost 6 months ago, she called and left a message for the landlord agent, P.H. to, "call her back". The landlord's witness, P.H. disputes this stating that no message was received. The landlord refers to the submitted documentary evidence which shows multiple FOB access to and from the rental property by the tenant's son and his girlfriend using two different FOBS that were assigned to the tenant. The landlord also refers to the photographs showing the tenant's son coming and going from the rental property as well as the logs which show usage by both persons throughout the day and night on multiple occasions.

The landlord also argues that the tenant failed to apply for dispute resolution to dispute the notice to end tenancy dated March 21, 2014 within the allowed timeframe and is conclusively presumed to have accepted that the tenancy was at an end. The tenant disputes this.

Analysis

I accept the evidence provided by both parties and find that the landlord's assertion that the tenant failed to dispute the notice to end tenancy dated March 16, 2014 has failed. I find that the tenant by filing for dispute against the notice to end tenancy dated March 6, 2014 is disputing an end to the tenancy for cause. The tenant cannot be said to not be disputing an end of tenancy as shown by her application. As such, I find that both notices shall be dealt with together under this hearing.

On the issue of cause for the notice to end tenancy issued on March 6, 2014, I find that the landlord has established a claim. The tenancy agreement as shown in the submitted documentary evidence clearly shows that letters dated November 28, 2011 and January 23, 2014 caution the tenant with notices warning the tenant that there was a breach to be corrected. I also find that the "typo" by the landlord's agent was an error and that the proper date should have been November 28, 2013 as opposed to 2011. The landlord has provided sufficient evidence in the form of the signed tenancy agreement, signed covenant and the two caution letters to establish a claim that the tenant has breached a material term of the signed tenancy agreement and failed to correct it within a reasonable time. The landlord is granted an order of possession. 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 remaining merits of the landlord's claim were not considered.

The landlord is entitled to recovery of the \$50.00 filing fee. I grant a monetary order for \$50.00 to the landlord. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant's application is dismissed.

The landlord is granted an order of possession and a monetary order for \$50.00.

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: May 08, 2014

Residential Tenancy Branch

