



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, OPC, CNC, LRE

Introduction

The landlord has filed an application seeking an order of possession and an order to recover their filing fee. The tenant has filed an application seeking to have a One Month Notice to End Tenancy for Cause set aside, a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, an order to allow access to the unit or site for the tenant or the tenants guests, an order to authorize the tenant to change the locks to the rental unit, an order to allow the tenant to assign or sublet because the landlords permission has been unreasonably withheld and an order to recover their filing fee.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided **full opportunity** to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony, have witnesses give testimony and to make submissions during the hearing.

Issues to be Decided

Is either party entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence Analysis

The relationship between these two parties is an acrimonious one. The two parties have been involved in numerous hearings and the hostility towards one another was apparent throughout the hearing.

Both parties provided extensive documentary evidence. All parties' testimonies and evidence have been considered in making a decision. All issues, evidence and arguments were considered but for the sake of clarity and brevity this decision will not repeat each and every item, instead it will focus directly on the claims as made in each party's application.

The tenancy began on or about April 1, 2012. Rent in the amount of \$1773.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$886.50.

As both parties have filed an application I will address them separately:

I will first deal with the landlords' application and my findings as follows:

Landlords Application for Order of Possession

The landlord gave the following testimony:

The landlord stated that the tenant has been running a short term bed and breakfast business from this unit. The landlord stated that they became aware that the tenant was purporting himself to be the owner of this unit and advertised short term stays on the internet. The landlord stated that the tenant had a range of prices for daily, weekly, and monthly rentals. The landlord stated that the tenant did not have the permission of the building owners to carry out this business.

The landlord stated that this is a material breach of the tenancy agreement. The landlord stated that he has no idea who is living in this suite as people are coming and going all the time and has received complaints from other tenants as this is a security breach. The landlord stated that the tenancy agreement does not allow subletting or short term bed and breakfast like tenancies. The landlord stated that this 128 unit complex is not licensed for such a business. The landlord stated that he is seeking an order of possession as soon as possible.

The tenant gave the following testimony:

The tenant stated that he had "implied" consent from the previous property manager. The tenant stated the previous property manager allowed him to seek "roommates" through the internet. The tenant stated that he would advertise to seek "roommates" to help him cover the cost of the unit. The tenant stated that he was trying to supplement his income. The tenant stated that he wishes to stay in the unit and that he has taken down his advertisement. The tenant stated that the landlord has caused him to lose significant rental income as a result of this notice.

The landlord issued a One Month Notice to End Tenancy for Cause on September 29, 2014 with an effective date of October 31, 2014. One of the grounds the landlord issued the notice for was that "The tenant was in breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so" In the tenancy agreement it clearly states that the "Tenants and guests shall use the premises for Private Residential Purposes Only and not for any illegal, unlawful, commercial or business purposes". The landlord stated that he had spoken to the tenant about this numerous times.

The landlord stated that the day after serving the tenant with the notice to end tenancy, another short term occupant arrived at the building to rent from the subject tenant. The landlord stated numerous times that the owners must know who is residing in their building for the safety of the other 127 tenants in the building.

In the tenants own testimony he stated that he had over 20 "roommates" in two and half years of tenancy. I asked the tenant the division of costs between the roommates and it was clear the tenant was renting rooms out at exorbitant costs that covered his portion of the rent. The tenant was very matter of fact that this was his way of making money to supplement his job and that he did not see any harm in it. The tenant was running this as a commercial venture to live rent free and to make money above and beyond covering the rent. Due to the tenants actions, it also "seriously jeopardized the health and safety or lawful right of another occupant or the landlord", another ground on which the landlord issued the notice to end tenancy. The tenant continually referred to seeking out "roommates" to help him with the cost of living in this part of the city. I do not accept the tenants version of events, for him to offer daily and weekly prices on the internet does not constitute actively and reasonably searching out a roommate but rather seeking out guests. The tenant has displayed a flagrant disregard of the tenancy agreement and the Residential Tenancy Act. Based on the above and on the balance of probabilities I am satisfied that the landlord has provided sufficient evidence to show that the tenancy must end. The One Month Notice to End Tenancy for Cause dated September 29, 2014 with an effective date of October 31, 2014 is of full effect and force. The tenancy is terminated.

Based on the above facts I find that the landlord is entitled to 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 landlord is entitled to the recovery of the \$50.00 filing fee. I order that the landlord retain \$50.00 from the security deposit to cover this cost.

Tenants' application:

As I have found that the tenancy is terminated I need not consider the tenants application for allowing access to the unit, authorizing a changing of the locks, or an order to allow subletting; accordingly I dismiss that portion of the tenants application.

The tenant is also seeking a monetary order of \$1709.50. The tenant is seeking \$50.00 for the filing fee, \$773.00 for rent that he states he had to pay because the landlord put a halt to allowing him to find "roommates" to subsidize the cost and \$886.50 for the stress of dealing with this matter, limited fob access for his roommates, and the landlords unlawful entry into the unit.

The tenant stated that the landlord would enter his unit without his permission. The tenant stated that he had specifically told the landlord not to enter during the month of October due to the pending hearing. The tenant stated that because the landlord had not allowed him to obtain new roommates for October he had to pay the rent on his own. The tenant stated that the landlord would disable his fobs to the building and it became a hassle. The tenant stated that the landlord harassed him by texting and phoning him numerous times throughout the month.

The landlord stated that he gave proper notice to the tenant to show his unit to potential new tenants. The landlord stated that the tenant had advised that he would be moving out by November 1, 2014 but then later changed his mind. The landlord stated that its "ridiculous" that he has to return part of the rent because the tenant had to pay the month of October on his own and not use his business to cover the cost. The landlord stated that he has had minor some issues with the rear access panel to the building but that affects everyone and not just the tenant. The landlord stated that there are alternative access points in the building that are fully functional and available to the tenant. The landlord stated that he deactivated fobs of any persons he was not familiar with and not on a signed tenancy agreement. The landlord stated that it was a safety concern to have transients coming and going so he was doing his best to provide a secure and safe place until this matter was resolved. The landlord stated that he only called or text the tenant to try to discuss this matter and try to resolve it peacefully and fairly without the need for arbitration.

The \$773.00 for rent is rent that is due regardless of who is paying it and the tenant has no legal basis to pursue the landlord for a rebate in this matter. The subject tenant is the name on the agreement and the subject tenant is responsible for the payment of rent. I dismiss this portion of the tenants' monetary claim. The tenant is seeking \$886.50 as compensation for the hassle of dealing with entry panel, the deactivation of the fobs, the landlords harassing phone calls and texts and the landlords illegal entry into the unit.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant must satisfy all four of the above grounds, the tenant has not. The tenant has not provided sufficient evidence to support any of the four grounds and I therefore dismiss this portion of his application. The tenant has not been successful for any part of their application and is not entitled to the recovery of the filing fee cost.

I dismiss the tenants' application in its entirety.

Conclusion

The One Month Notice to End Tenancy for Cause dated September 29, 2014 with an effective date of October 31, 2014 is of full effect and force. The tenancy is terminated. The landlord is granted an order of possession and is entitled to retain \$50.00 from the security deposit to cover the filing fee cost.

The tenants' application is dismissed in its entirety.

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 18, 2014

Residential Tenancy Branch

