



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This was a hearing with respect to the tenant's application to cancel a one month Notice to End Tenancy for cause. The hearing was conducted by conference call. The tenant and the landlord's agent called in and participated in the hearing. I heard testimony from the two named witnesses called on behalf of the landlord.

Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Background and Evidence

The rental unit is a house in Vancouver. The respondent is the owner and landlord. The landlord has rented the house to several co-tenants and has authorized one of the tenants to be the landlord's liaison to collect rent on behalf of the landlord and to be a contact person to advise the landlord of any repair issues or house related matters.

The applicant moved into the rental unit in 2012 as one of five tenants. The monthly rent for the whole of the house was \$2,400.00. Utilities are paid by the tenants. The landlord supplied copies of past tenancy agreements. The agreements were for fixed terms and named Mr. P.C., the landlord's agent and the listed persons as tenants. The agreement dated January 28, 2012 was for a 12 month term and named six persons as tenants.. The applicant was named as one of five tenants in the tenancy agreement for a 12 month term beginning January 1, 2013.

The landlord's agent served the tenant with a one month Notice to End Tenancy for cause dated January 31, 2015. The Notice to End Tenancy required the tenant to move out of the rental unit by March 1, 2015. The stated grounds for the Notice are that the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord. A further ground alleged that the tenant

has assigned or sublet the rental unit without the landlord's written consent. Another ground alleged is that the tenant has not paid a security or pet damage deposit within 30 days as required by the tenancy agreement.

The landlord's agent testified that in 2014 one of the tenants, B.M. was responsible for collecting rent from the co-tenants and forwarding it to the landlord. B.M. gave notice of his intention to move out of the rental unit and in August, 2014 the applicant took over the collection of rent on behalf of the landlord. The landlord's agent testified that because of the turnover of tenants he requested that a new fixed term lease agreement be signed to commence January 1, 2015. The landlord sent the one page agreement to the applicant and asked to have all the tenants sign the agreement. The landlord testified that, instead of having each person sign the agreement as tenants, the applicant signed the agreement as tenant and then created a second page to the agreement and caused the other tenants to sign the agreement, naming them as occupants.

I heard testimony from two witnesses called by the landlord. The witnesses reside in the rental property together with the applicant. The witness, M.M. testified that he has lived in the rental unit for the past 14 months. He said that the applicant has been responsible for paying utility bills and forwarding rent to the landlord, but she has regularly failed to pay the bills on time and has made requests to him for payment, but she has presented disorganized calculations and has failed to produce the actual bills. Mr. M.M. testified that the tenant has kept a rabbit in the rental unit and did not clean up after it, creating an unsanitary condition with rabbit droppings, urine, odour and flies in the house. M.M. said that when the tenant, B.M. moved out of the rental unit, the applicant told M.M. that she intended to find a new occupant and planned to charge him \$700.00 per month instead of the usual monthly rent of \$500.00 and keep the additional \$200.00 for her own use to cover what she said were her own expenses.

M.M. testified that the applicant misled him and the other tenants by having them sign and date a document separate from the tenancy agreement that the landlord intended to have them sign. M.M. testified that the applicant did not find a new tenant for the month of January and when M.M. found a new room-mate at the last minute, the applicant then claimed to be M.M.'s landlord and gave him a one month Notice to End Tenancy Notice to End Tenancy for cause. He said the applicant became hostile, accused him and the new room-mate of being trespassers and threatened to call the police.

The tenant, A.F. was also called as witness by the landlord's agent. She testified that the applicant was keeping a rabbit in her room when A.F. moved into the rental property

in August. She said that later the rabbit was moved into the communal areas of the house. She said the applicant did not properly clean the rabbit's cage and the droppings and urine attracted flies and became a nuisance. She said the rabbit was at the house for six months. Miss A.F. also testified that the applicant proposed to rent out a vacant room at an increased rate after B.M. moved out. She said that the applicant proposed to collect increased amounts of \$700.00 to \$900.00 for the vacant room, but keep the other rent prices at the current rate. Miss. A.F. also said that the tenant demanded payments for utilities and became angry when asked to produce the bills. She testified that the applicant asked her to sign a tenancy agreement separate and different from the one provided by the landlord. She said the agreement stated that she would become the applicant's tenant and that the applicant was the landlord of the residence. She testified that she refused to sign the agreement. On January 31, 2015 A.F. and M.M. spoke to P.C., the landlord's agent to confirm whether it was appropriate for them to tell the new room-mate he could move into the house. The landlord's agent confirmed that it was appropriate and then he informed the applicant that he was giving her a one month eviction notice. She said that the applicant then started banging on doors and shouting obscenities, calling M.M. and the new room-mate trespassers.

In the application for dispute resolution the applicant stated that:

The Notice to End Tenancy is based on lies and false testimony given by my tenant(s) to my landlord, who are retaliating after being given an eviction notice and have followed through on threats and are now using this notice to threaten & intimidate me.

The applicant testified that she is the tenant of the owner of the rental property, but in fact she is the landlord to the other occupants of the rental property who are her sub-tenants. She referred me to an e-mail from the landlord's agent. Attached to the e-mail was a new form of tenancy agreement. The landlord's agent said in part: "Please list all the occupants, as well as have them sign the agreement. If you have any questions please don't hesitate to contact me." The enclosed draft agreement was a one page document with spaces for signature by the agent for the landlord and by multiple unnamed tenants. The tenant signed the document as tenant and created a separate second page. The second page said: "Occupants of the house located at (address of rental unit) are as follows:." Signature lines were placed beneath the text with the word "Occupant" beneath each signature line.

The tenant said that the landlord's acceptance of the document confirmed that she is the tenant of the owner and the other occupants of the rental unit are her tenants.

The tenant said that this arrangement whereby she is the landlord of the other occupants of the rental unit was confirmed by the decision in an earlier dispute resolution proceeding dated July 11, 2013. The tenant was also the applicant in this previous decision which also concerned this rental property. The tenant applied in the earlier proceeding to cancel a one month Notice to End Tenancy that was served upon her by B.M. her co-tenant representing himself to be her landlord. The tenant submitted that the earlier decision showed that the tenant has now assumed the role of landlord with respect to the other occupants of the rental unit, just as the respondent in the earlier proceeding had done when he attempted to evict her. The following passage is found in the arbitrator's analysis in the July 11, 2013 decision:

The person that presented themselves as the landlord is a co-tenant that shares the house with the subject tenant of this hearing. This individual stated that he is the named person on the lease and that he sublets the unit to the others; however he was unable to produce any documentation to support that. In addition; there is not a tenancy agreement in place, written or implied. The subject tenant was clear that there has never been a formal arrangement in terms of the date when rent was to be paid. The landlord acknowledged no formal written agreement was in place but he and his witnesses referred to notes on the "white board " to the subject tenant that the rent was late. The landlord was unable to provide neither documentation of the late payments nor any documentation that written warnings or cautions were given to the tenant. Based on the aforementioned, and upon careful consideration of all the evidence before me, I find that the landlords have failed to prove the tenants breached a material term of their tenancy agreement .The landlord has not satisfied me that there is cause to end this tenancy.

The applicant denied that there were grounds to tend the tenancy as alleged by the landlord. She said that she was looking after the rabbit for a family member temporarily and the rabbit is no longer at the rental unit. She denied that it was not properly cared for or that it created a nuisance in the rental unit. She said that she has not engaged in any illegal activity and the owner has not provided any evidence of illegal activity. She said that she was never asked to provide a pet deposit and the tenancy agreement does not require a pet deposit.

The landlord's agent testified that it was never the landlord's intention to allow the applicant to take over the rental of the house and sublet it. The tenancy agreement that the landlord forwarded to the applicant was intended to be signed by all occupants as co-tenants. The landlord's agent said that when he received documents from the applicant, he was unaware that the applicant was attempting to take control of the rental property by assuming the role of landlord. He testified that he became aware of the applicant's intentions after he was contacted by M.M. who advised him that the applicant had given him an eviction notice.

In his written submission the landlord's agent stated as follows:

(the applicant)'s actions directly affect the other tenants' interests and well being. She's hostile towards other tenants and falsely claims that she is the sole tenant of the house. This is untrue as I have told her that everyone in the house is the tenant of the owner, and she is the main contact for house. In a couple of communications with other tenants she clearly implies that this is the case. The practice of having everyone on the lease has been done ever since I took over as agent of the landlord in 1999. Finally, (name of tenant) has kept a pet in the house without notification and the refuse is a health concern for everyone living in the house.

At the hearing the witnesses confirmed the applicant's rabbit has not been present in the rental unit for some months.

Analysis

The landlord has taken a "hands off" approach to the management of this rental property. It is apparent from the evidence presented, including past tenancy agreements submitted as documentary evidence, that the landlord has allowed one of the tenant/occupants to act as the landlord's agent for the purpose of collecting rent and even with respect to securing new tenants when vacancies have arisen. The person fulfilling this role has changed from time to time as tenants have come and gone from the rental property.

It is apparent from the testimony presented at the hearing that the applicant saw an opportunity to step into the vacuum of authority that resulted from the landlord's indifferent management style and assume the mantle of landlord by seeking to establish herself as head tenant and landlord to the other occupants. When the landlord's agent learned from the witnesses that the applicant was conducting herself as though the

other occupants were her tenants, he served the Notice to End Tenancy that is the subject of this hearing.

I find that the only ground stated in the Notice to End Tenancy that has any merit is the ground that the tenant has assigned or sublet the rental unit without the landlord's written consent.

The applicant submitted that the July 11, 2013 decision quoted above provides authority for her position that she alone is the landlord's tenant and all other occupants who she said pay rent to her, are, as prescribed by law, her tenants.

I do not accept the tenant's position. I find that the landlord did not agree to any such arrangement and the fact that there is a document signed by the applicant as tenant, and the others as occupants was brought about by the deceit and misdirection of the applicant. I find that the documents do not reflect a conscious decision by the landlord to rent to the applicant as sole tenant and empower her to sublet the rental property to the other existing tenants.

The previous decision quoted above does not support the tenant's position and it has no precedential value in this proceeding. In the earlier proceeding the arbitrator noted that:

This individual stated that he is the named person on the lease and that he sublets the unit to the others; however he was unable to produce any documentation to support that.

The Notice to End Tenancy was set aside in the earlier proceeding without any explicit finding that the person who gave it was in fact the landlord and able to give such a notice.

I find that the tenant has sought to sublet the rental unit without the landlord's consent and that there are sufficient grounds to support the Notice to End Tenancy given to the tenant on the ground that she has sublet without the landlord's written consent. I therefore decline to cancel the Notice to End Tenancy and I dismiss the tenant's application without leave to reapply. The Notice to End Tenancy was personally served upon the applicant on January 31, 2015. The Notice to End Tenancy requires the tenant to move out of the rental unit by March 1, 2015.

The landlord requested an order for possession at the hearing.

Section 55 of the *Residential Tenancy Act* provides as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenant's application to dispute the landlord's Notice to End Tenancy. The landlord made an oral request for an order of possession at the hearing. Pursuant to section 55 I grant the landlord an order for possession effective two days after service upon the tenant. This order may be registered in the Supreme Court and enforced as an order of that court.

The landlord is cautioned that he must create and sign new tenancy agreements with those persons who the landlord is prepared to accept as tenants and who desire to continue to occupy the rental unit. Finally, I note that the landlord's failure to actively manage the rental property and to assume his proper role as landlord is one of the factors that has led to dissension between the occupants as co-tenants.

Conclusion

The tenant's application has been dismissed without leave to reapply. The landlord has been granted an order for possession.

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: March 3, 2015

Residential Tenancy Branch

