



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROB REGAN-POLLOCK HOLDINGS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC, OPC, FF

Introduction

This hearing was convened in response to cross applications by the parties. The tenant applied to cancel a 1 Month Notice to End Tenancy For Cause (the Notice), dated April 15, 2015. The landlord applied for an Order of Possession pursuant to the Notice. Both parties requested recovery of their respective filing fee.

Both parties attended the hearing and were given full opportunity to present all *relevant* evidence and testimony in respect to their claims and to make *relevant* prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged receiving all document evidence of the other also submitted to me.

Issue(s) to be Decided

Is the notice to end tenancy valid and issued for valid reasons?
Should the Notice to End dated April 15, 2015 be set aside?
Is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began in August of 2007. The parties submitted an abundance of document evidence, including a copy of the Tenancy Agreement and the Notice to End - which was issued for the reason;

-Tenant has assigned or sublet the rental unit without landlord's written consent.

The tenant disputes the Notice to End. The landlord submitted they have evidence they issued a valid Notice for valid reason. The landlord argued the Tenancy Agreement incorporates - as addendum to the Agreement - the Strata Plan by-laws, which they argue limits *how* the rental unit may be occupied. I do not have benefit of an addendum to the agreement and the tenancy agreement does not reference an addendum or other pages – other terms are as hand written on the agreement. Regardless, it was

highlighted that the tenancy agreement is permissive on the tenant assigning or subletting the rental unit with the consent of the landlord.

The landlord submitted that at least since 2013 the tenant has permitted periodic co-occupation of the rental unit by a series of *non-family* individuals and that during portions of those periods *the tenant* has been away from the rental unit on travel – during which times it has been challenging communicating with the tenant. The landlord submitted evidence from the building concierge documenting that individuals, other than the tenant, have accessed the rental unit and the ancillary facility of the residential property. The landlord provided evidence of the names of individuals occupying the rental unit and the duration of their residency, up to a year. The landlord claims the tenant is subletting the rental unit and operates the rental unit as a business – interviewing prospective occupants to reside in the unit.

The tenant does not dispute the landlord's evidence respecting the periodic co-occupation of the unit by individuals other than themselves; but that they have always possessed and themselves continue to occupy the rental unit from the outset of the tenancy and have always abided by the tenancy agreement and strata by-laws respecting the number of occupants of the unit. The tenant denies the landlord's claim they sublet the rental unit. Rather, the tenant argues that they have periodically allowed room-mates, or "friends of family", family, or others seeking temporary shared accommodation and have received consideration from them. The tenant denies they ever entered into a tenancy agreement with any of their room-mates. The tenant does not deny they travelled and were periodically absent from the rental unit during the course of the shared occupation of the rental unit, but testified they returned and have never contractually or informally relinquished their "family home" to others, and have always remained legally obligated to the landlord.

Analysis

I have reviewed all evidence and in this matter. It must be noted that in this type of dispute the burden of proof rests with the landlord to provide evidence that the respective Notice was valid and validly issued for the stated reason.

I find that *subletting* refers to when a contractual tenant of the rental unit relinquishes occupation of the unit to another party, and effectively becomes a landlord to the other party, however still remains legally obligated to the original landlord of the tenancy agreement. Simply: the tenant enters into a tenancy agreement with a new party to assume the tenancy but remains obligated to the landlord. In this matter, I have not been presented with evidence the tenant relinquished sole use and occupancy of the rental unit to a new party. Rather, the evidence is that the contractual tenant lived in the unit sharing the accommodation with a room-mate or an individual they vetted to share the rental unit as co-occupants. There is no evidence the tenant assigned or sublet the rental unit. The landlord suggested that the Strata by-laws prescribe how the rental unit may be occupied and the tenant indicated the by-laws prescribe the maximum number of occupants of a unit, but I have not been presented evidence supporting the tenant

has breached a *material term* of their tenancy agreement in contravening a Strata by-law. The landlord's Notice to End did not state the tenant was in breach of a *material term* of the tenancy agreement.

As a result of all the above I find insufficient evidence the tenant has sublet or assigned the rental unit without the landlord's consent. The landlord has not met their burden in this matter. I find that the landlord has not provided evidence that the Notice to End was issued for the reason stated in the notice to end, and as a result I am unable to establish that the landlord issued the tenant a valid Notice to End. Therefore, **I Order** the Notice to End dated April 15, 2015 is **cancelled**, or set aside.

The landlord's application is effectively **dismissed**. The landlord is at liberty to issue a new valid Notice to End for *valid* reason if they have evidence to support such a Notice.

As the tenant has been successful in their application they are entitled to recover their filing fee from the landlord.

Conclusion

The tenant's application is granted with the result the landlord's Notice to End is **set aside and is of no effect**. The tenancy continues.

The landlord's application is **dismissed**.

I Order the tenant may deduct **\$50.00** from future rent in satisfaction of their filing fee.

This Decision is final and binding on both parties.

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: June 09, 2015

Residential Tenancy Branch

