



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER PRESTIGE REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order cancelling the One Month Notice to End Tenancy for cause; and to recover the filing fee from the landlord for the cost of this application.

The tenant's agent (the tenant) and the landlord's agent (the landlord) attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy?

Background and Evidence

The parties agreed that this tenancy started two years ago for a fixed term of one year, thereafter reverting to a month to month tenancy. Rent for this unit is \$1,350.00 per

month due on the 1st of each month. The tenants are a company who rent units and then sublease these units with the landlord's permission. The tenants do not live in the unit and the unit is sublet to other tenants.

The landlord testified that over the course of the tenants renting this unit there have been a significant number of noise complaints made about the sublease tenants. Several Strata fines have been levied to an amount of \$1,350.00 and currently there is still \$650.00 outstanding in Strata fines.

The landlord referred to their documentary evidence concerning noise from this unit which has significantly disturbed other occupants. The building uses a security company who patrol and deals with any afterhours incidents in the building. This company have provided written reports about noise from this unit often late at night and the many times the police have been called to deal with noise complaints, an incident that involved the sublease tenants or other persons permitted on the property by the sublease tenants having sex on the balcony and the smell of smoke or marijuana from the unit. The latest report dated November 19, 2015 documents that a complaint was received about a party in this unit. The security company found a group of people smoking and being very loud on the balcony. The entire hallway was full of smoke which smelled like marijuana. Security personnel knocked on the door and the residents answered and looked intoxicated. The unit was full of smoke that smelled like marijuana. The residents were asked to be quiet and not to smoke marijuana in the building. The resident apologised and said she would use a fan to clear the smoke.

The landlord testified that they have tried to work with the tenants to get the Strata fines paid and to ensure they get good tenants for this unit; however, the landlord has lost faith in the tenant's management of their sublease tenants that they rent the unit to. The landlord agreed that they have not received any further complaints about the current sublease tenants but fears that when these sublease tenants leave the unit the tenant will sublease the unit again to unsuitable tenants as they do not appear to do proper checks on their tenants.

The landlord testified that the previous sublease tenants caused a hole in the living room wall. The landlord inspected the unit a month ago and this hole has still not been satisfactorily repaired. The landlord referred to their photographic evidence showing the hole in the wall.

The landlord testified that the tenants have also breached a material term of the tenancy agreement which stipulates that the tenant must inform the landlord when there is a change of tenants. The landlord testified that this is important because any person living in the unit must sign a K form for the Strata and get the Strata rules. The landlord's tenant simply fills in these forms themselves and send them to the Strata so the landlord has no idea who is living in the unit unless they go to the unit and meet the sublease tenants.

The landlord testified that the tenant has also misrepresented themselves to the Strata claiming they are agents for the landlord when they need to purchase new fob keys. The tenant is not authorised to do this.

Due to these issues the landlord seeks to end the tenancy with the tenant and take over the management of the unit and the tenants living there. A One Month Notice to End Tenancy for Cause (the Notice) was issued on October 26, 2015 and served upon the tenant by registered mail on that date. A copy of the Notice has been provided in documentary evidence. This Notice has an effective date of November 30, 2015 and provides the following reasons to end the tenancy:

- 1) *The tenant or a person permitted on the residential property by the tenant has*
 - (i) *Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
- 2) *The tenant has not done required repairs to the unit, site of property*
- 3) *The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.*

The landlord orally requested an Order of Possession of the rental unit effective at the end of December, 2015. The landlord testified that he is willing to work with the tenant's sublease tenants if they have a lease that extends past December 31, 2015.

The tenant disputed that their current subtenants have disturbed other occupants. The tenant agrees that their previous tenants did cause some disturbances but the two tenants currently living in the unit are quiet and respectful and the manager of the building is happy with them. The one incident that occurred just after they moved in was dealt with and has not been repeated.

The tenant testified that in the summer they did rent the unit to some students who liked to party and smoke on the balcony. The tenant testified that they do run checks on all their sublease tenants. If the landlord had communicated more effectively with the tenant's company about complaints against their sublease tenants then the tenant's company could have dealt with these issues more effectively.

The tenant testified that as they are effectively the landlords of their sublease tenants then they are entitled to fill in the K form and fax these directly to the Strata and a copy is also faxed to the landlord. The landlords are therefore made aware of who is living in the unit.

The landlord testified that they are not entitled to do the K forms these forms must be completed by the landlord. The landlord testified that some communication did stop after one of the owners of this tenant's company threatened the landlord; however, if they send an email then the landlord responds and will answer any phone calls made to his office.

The tenant cross examined the landlord and asked if the landlord sends any Strata notices to the tenant in a timely manner. The landlord responded that the Strata send any notices concerning complaints and fines directly to the dispute address it is up to the tenant's company to make arrangements with their sublease tenants to have these

notices passed on. The tenant asked the landlord why they won't send them copies of any notices as their sublease tenants do not always forward them on. That way the tenant's company could manage their sublease tenants more effectively. The landlord responded that they need to contact the Strata to get any notices sent directly to their PO Box address.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The tenant agreed that there have been some incidents that occurred in the unit with their sublease tenants. If a tenant has sublet a unit to other tenants then they effectively become the landlord of the sublease tenants but remain the tenants of their landlord. With this sublease come certain responsibilities such as ensuring their sublease tenants do not disturb other occupants. It is clear from the evidence provided that there have been a significant number of disturbances over the term of this tenancy. As the tenants of the landlord they remain responsible for the actions of their sublease tenants and despite many complaints and Strata fines being levied against them they did not take reasonable steps to evict their sublease tenants to maintain the quiet enjoyment of other occupants in the building.

The new sublease tenants also caused a disturbance in the building shortly after they moved in and there is evidence provided that the new sublease tenants had a loud party and smoked marijuana on the property. While I accept that these new sublease tenants have not incurred any further complaints about noise or smoking illegal substances the fact remains that the landlord has met the burden of proof that other occupants have

been significantly disturbed by all of the sublease tenants who have resided in the unit. The security company reports detail that these issues have been ongoing since March, 2014 to November, 2015 with incidents covering noise, smoking, loud parties and people having sex on the balcony.

The landlord expressed concerns about the tenant's management of their sublease tenants and seeks to end the tenancy with their tenants due to the disturbances. I must concur that the tenant has not dealt with the complaints about their sublease tenants in a timely or satisfactory manner which could have prevented many of these complaints being made. It is not enough to simply pay the Strata fines when they have been issued, the tenants as landlords of their sublease tenants must act accordingly to prevent disturbances and have failed to do so.

I find therefore that the tenant's application to cancel the Notice is dismissed. As I have found the first reason on the Notice is a valid reason to end the tenancy then I am not required to deal with the other reasons provided on the Notice.

I refer the parties to s. 55(1) of the *Residential Tenancy Act (Act)* which states:

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.

The landlord has orally requested an Order of Possession. Having allowed the Notice I will grant that Order. The effective date on the Notice in this matter was November 30,

2015. As that date has now passed, I grant the landlord an Order of Possession effective as requested on December 31, 2015.

Conclusion

I HEREBY dismiss the tenant's application in its entirety.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective at 1.00 p.m. on December 31, 2015. This Order must be served on the tenant, if the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

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: December 14, 2015

Residential Tenancy Branch

