



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC

Introduction

This was a hearing with respect to the tenant's application to cancel a 10 day Notice to End Tenancy for unpaid rent and a one month Notice to End Tenancy for cause. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing together with the named witnesses.

Issue(s) to be Decided

Should the November 5, 2015 Notice to End Tenancy for unpaid rent be cancelled?
Should the December 1, 2015 Notice to End Tenancy for cause be cancelled?

Background and Evidence

The rental unit is a house in Vancouver. The landlord testified that a tenancy began in April, 2014. The rental agreement was made between the landlord and J.B., but the tenant was an occupant of the house with J.B. The monthly rent was \$2,950.00. In April, 2015 the tenant J.B. was evicted for non-payment of rent. The landlord was granted an order of possession pursuant to a decision made on April 8, 2015. The landlord testified that after J.B.'s eviction, the respondent asked if he could continue to live in the rental unit. He told the landlord that he had a close friend, and a woman and her two adult children who wished to live in the house. He said they would all share the rent equally. The landlord testified that she agreed to rent to all four persons and it was agreed that she would give the tenant one receipt as proof that all had paid their share of the rent. The landlord said she tried on several occasions to have a tenancy agreement signed by all the occupants of the rental unit, but the tenant routinely said: "Ok next time you come", but an agreement was never signed.

The landlord testified that she received a message from the tenant regarding the eviction of another occupant of the rental unit. The tenant wanted to evict a tenant

because he said the tenant was disruptive. The landlord came to the rental unit on October 1, 2015. She testified that other occupants of the house approached her to complain about the conduct of the tenant; they told her that the tenant had made sublet agreements with other occupants and was charging increased rents to other occupants in order to subsidize his own rental expenses. The landlord testified that she received complaints about the tenant's hostile and argumentative behaviour and his attempts to impose unreasonable rules on other occupants. During the dispute the police attended at the rental unit. A police officer told the landlord that they have been called to the rental property on several occasions because of disputes between the occupants. In the presence of the police the landlord told the tenant that he was not to act as her agent and she would collect the rent from all the tenants occupying the rental unit. The landlord testified that the tenant agreed to this arrangement in the presence of the police.

The landlord said that she came to the rental unit on November 1, 2015 to collect rent from all tenants; she said that she did not receive rent from the tenant. On November 5, 2015 the landlord gave the tenant a 10 day Notice to End Tenancy for unpaid rent. The Notice was dated November 5, 2015 and it claimed that the tenant had failed to pay rent in the amount of \$576.00 that was due on November 1, 2015. The tenant filed an application for dispute resolution on November 10, 2015. In the application he applied to dispute the 10 day Notice to End Tenancy for unpaid rent. He said in the application that:

Homeowner has breached the Tenancy Agreement and has attempted to terminate our agreement without cause or notice. I am the sole renter of the house at (address) and have been since April, 2015.

The landlord gave the tenant a second 10 day Notice to End Tenancy dated November 12, 2015. This Notice claimed that the tenant failed to pay rent in the amount of \$2,950.00 that was due on November 1, 2015.

The landlord learned from other occupants of the rental unit that the tenant had given them Notices to end their tenancies for unpaid rent. Other occupants complained about the tenant's conduct and told her that they felt unsafe living in the rental unit. On December 1, 2016 the landlord personally served the tenant with a one month Notice to End Tenancy for cause. The Notice required the tenant to move out of the rental unit by January 1, 2016. The landlord stated several different reasons for the Notice to End Tenancy. She said that the tenant had allowed an unreasonable number of occupants in the rental unit. She said that he had significantly interfered with, or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health, safety or

lawful right of another occupant or the landlord and that he had put the landlord's property at significant risk. She also claimed that the tenant engaged in illegal activity adversely affecting the quiet enjoyment, security or safety of another occupant and that he had assigned or sublet the rental unit without the landlord's written consent and finally that the tenant gave false information to a prospective tenant of the rental unit. The Notice to End Tenancy purported to end the tenancy effective January 1, 2016, but the earliest date that the Notice could be effective is January 31, 2016. Pursuant to section 53 of the *Residential Tenancy Act*, such an incorrect date will be considered to be corrected to the earliest date that complies with the applicable section of the *Residential Tenancy Act*.

On December 2, 2015 the tenant filed an amendment to his application for dispute resolution to include a request to cancel the one month Notice to End Tenancy for cause. The landlord testified that the tenant did not serve her with the amended application and she was unaware that he filed an amendment to dispute the one month Notice to End Tenancy. She expected the tenant to move out on January 1, 2016. She sent a text message to the tenant on January 3, 2016 and said that she thought he had moved out because he didn't apply to dispute the Notice to End Tenancy within 10 days. The tenant replied by text message the following day he said in part that:

I told you very clearly that I dispute your malicious attempt to subvert the tenancy laws and conspire with my tenants to do harm to me. Your eviction notice was invalid and unjustified. We filed your eviction notice, as part of our previous and ongoing dispute with you, with the RTB and we have an arbitration hearing related to this all coming up on January 12th and I made this clear to you on numerous occasions now. You are attempting to appear ignorant and uninformed when you are willfully and intentionally trying to interfere with and harm my life. You are expected to comply with RTB rules and converse with them about them if any of their rules are unclear. I need to meet with you to hand you papers, please let me know a time when you will be home or a time and place we can meet.

The tenant claimed that he is the leaseholder of the rental property since April, 2014. He said that in April, 2015 the landlord agreed to rent the house to him as sole tenant and gave him permission to find new tenants to fill the rooms. According to the tenant she was to have nothing to do with the occupants of the rental unit except for the tenant. The tenant has claimed that the landlord has acted improperly by conspiring with his tenants to defeat his tenancy by taking over control of the rental property.

Analysis

The tenant has claimed that landlord gave him unfettered control of the rental unit and the right to sublet rooms within the unit as he saw fit. The landlord testified that there was a very different arrangement to that stated by the tenant. She said that she agreed that the tenant could act as her agent for the purpose of collecting rent, but that all of the occupants of the rental unit were to be her tenants. She said that she tried to get the tenant to have all the occupants of the rental unit to sign a tenancy agreement, but she was unsuccessful in doing so and eventually forgot to pursue the matter.

Since October, 2015 the landlord has been collecting rent from individual occupants of the rental unit. The landlord claimed in the one month Notice to End Tenancy that the tenant has sublet the rental unit without her permission. She also alleged that there are an unreasonable number of occupants in the rental unit.

The *Residential Tenancy Act* provides as follows:

Assignment and subletting

- 34** (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.
- (2) If a fixed term tenancy agreement is for 6 months or more, the landlord must not unreasonably withhold the consent required under subsection (1).
- (3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

The tenant does not have a written tenancy agreement with the landlord and he never obtained the landlord's consent in writing to sublet the rental unit or any portion of the rental unit to the persons he claims to be his tenants.

The Residential Tenancy Policy Guideline with respect to the rights and responsibilities of co-tenants provides in part as follows:

Occupants

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the

tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

I find that the persons, other than the tenant, presently occupying the rental unit are not tenants. The policy guideline states that persons allowed to move in and share rent have no rights or obligations under the tenancy agreement unless all parties, meaning the landlord and all intended tenants, agree to a tenancy agreement to include the new occupants as tenants. The landlord asked for such a tenancy agreement, but she was stalled by the tenant who avoided responding to her request.

The tenant has been attempting to operate the rental unit upon the false premise that he has some legitimate authority to act as landlord and operate the rental unit as a rooming house in the absence of written permission from the landlord to sublet as required by the *Residential Tenancy Act*.

On December 2, 2015 the tenant amended his application to include an application to dispute the one month Notice to End Tenancy. The tenant was obliged to serve that amendment as soon as possible; he did not do so and as late as January 3, 2016 still had not served the amended application. The landlord did eventually receive notice of the amendment. I find that there are ample grounds to uphold the one month Notice to End Tenancy. The tenant has sublet the rental unit without the landlord's consent and he has permitted occupants to move into the rental unit without the landlord's knowledge, and without any written tenancy agreements. The tenant has created the current situation where strife and dissension have erupted between the tenant and other occupants resulting in several police attendances to intervene in disputes between the tenant and other occupants. I find that the circumstances created by the tenant have seriously jeopardized the health or safety of occupants of the rental property and that the tenant has put the landlord's property at significant risk. I therefore dismiss the tenant's application to cancel the one month Notice to End Tenancy dated December 1, 2015 without leave to reapply. In light of my findings with respect to the one month Notice to End Tenancy for cause, it is unnecessary to consider the claim to cancel the 10 day Notice to End Tenancy for unpaid rent.

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 to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The tenant's application has been dismissed without leave to reapply. The landlord's Notice to End Tenancy was in the proper form and I have found that the landlord has established that there are valid grounds for ending the tenancy. The effective date of the Notice to End Tenancy has passed and I grant the landlord an order for possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that court.

The effect of this order is to end the tenancy of the tenant and all other occupants of the rental property. The tenancy has ended and all occupants are required to vacate the rental unit. If the landlord chooses to do so she is free to enter into a new tenancy agreement with former occupants of the rental unit.

Conclusion

The tenant's application is dismissed without leave to reapply. The landlord has been granted an order for possession effective two days after service on the tenant.

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: February 15, 2016

Residential Tenancy Branch

