



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRESENT HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, AAT

Introduction

This hearing was convened by way of conference call in response to the tenants' application for an Order to cancel a One Month Notice to End Tenancy for Cause and an Order for the landlord to allow access to and from the unit for the tenants or the tenants' guests.

The tenant DB and two agents for 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 tenants 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

- Are the tenants entitled to an Order to cancel the One Month Notice to End Tenancy?
- Are the tenants entitled to an Order to allow access to and from the rental unit for the tenants or the tenants' guests?

Background and Evidence

The parties agreed that this tenancy originally started with the female tenant BS on June 28, 2012. A new tenancy agreement was entered into on January 01, 2014 when the male tenant DB was added to the tenancy agreement. This is a month to month tenancy for a subsidized rental unit through BC Housing. The tenants' portion of the rent is \$510.00 per month due on the first of each month.

KM provided testimony for the landlord and testified that this is a one bedroom unit in a complex for seniors with low income and persons with disability. The section of the tenancy agreement "occupants and guests" states the number of occupants in the unit and is considered to be a material term of the tenancy agreement. One bedroom units are rented to one or two tenants. When this tenancy originally started with the tenant BS she was reminded of her obligation to notify the landlord of any additional occupants as her rent was based on her gross household income and any other occupants must be declared.

The tenant had allowed her partner DB to move into her unit in 2013 and did not notify the landlord immediately. The landlord did allow DB to become a tenant and the rent for the unit was calculated based on the tenants' gross household income. The landlord testified that this shows that the tenants were aware of the requirement to notify the landlord of any additional occupants living in the unit.

The landlord testified that they have reason to believe that the tenants have allowed the daughter of BS to live in the unit. The landlord will not enter into a tenancy for a one bedroom unit with three occupants. The landlord testified that they have received phone calls from people including the RMCP trying to contact the tenant's daughter saying she has listed the tenants' unit as her address. The tenant's daughter has also been seen at the unit at all hours of the day and night by staff and other tenants and this was also recorded on CCTV. The tenant BS also admitted in writing that her daughter is an occupant and that they will not ask her to find alternative accommodation.

The landlord referred to section 13 of the tenancy agreement which states, in part,

'That any change in the number of occupants is material and of great importance to the landlord and entitles the landlord at its discretion to end this tenancy agreement. The tenant agrees to notify the person that resides with the tenant in excess of 14 days, whether or not consecutive, in any 12 month period, with the written consent of the landlord, will be considered an occupant and that person's income must be declared to the landlord'.

The landlord testified that they have reason to believe the tenant's daughter was living at the rental unit since October, 2015. On January 06, 2016 a letter was sent to the tenants concerning the number of occupants and they were asked to provide proof of the daughter's permanent address with a deadline of January 11, 2016 at 4.00 p.m. The tenant DB came to the office on January 11, 2016 with a letter stating that although their daughter sometimes uses the address for mailing purposes she was not an occupant and had not been on the premises since October, 2015. Later on January 22, 2016 both tenants admitted that this was not the truth.

The landlord testified that a second letter was sent to the tenants on January 13, 2016 and a new deadline was given of January 22, 2016. This letter informed the tenants that without proof that their daughter lived elsewhere and was only a guest in the unit a Notice to End Tenancy would be served. On January 22, 2016 the tenant BS came to the office to discuss that letter. BS confirmed that her daughter was living in the unit and asked if she could stay longer as she had nowhere to go. BS would not provide a definitive time that her daughter would vacate. A meeting was set up for both tenants later that day and during that meeting both tenants admitted that the number of occupants in the unit was three. As they could not give a date when their daughter would leave, a One Month Notice to End Tenancy for Cause (the Notice) was served upon the tenants on January 22, 2016 in person.

A copy of the Notice has been provided in documentary evidence. This Notice has an effective date of February 29, 2016 and provides the following reasons to end the tenancy:

- 1) The tenant has allowed an unreasonable number of occupants in the unit*
- 2) 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 landlords testified that the tenants have allowed an unreasonable number of occupants in this one bedroom unit and did not correct this material term of the tenancy agreement even after two written notices to do so were provided to the tenants. Due to the above the landlords seeks an Order of Possession effective as soon as possible.

The tenant disputed the landlord's claims. The tenant DB testified that their daughter has never moved into the unit. Their daughter had been living on the streets and got involved in a situation. Kids are dying on the streets of drugs so they took her off the street and have tried to get her into a program. This has been difficult to achieve. The other tenant BS is in California and visits there three times a year for six weeks. During this time her daughter stays with DB as he has undergone surgery and has disabilities. DB agreed that their daughter does make some noise at night but they are working on this. When she stays as a guest she sleeps on the couch. They have another daughter with her own place and sometimes this daughter goes and stays with her.

DB testified that BS decided that her daughter should come and stay while she waited to get on her programme but she did not come until the end of December, 2015. Prior to that she was not at the unit after Halloween and has not been seen by DB for November and most of December, 2015.

DB testified that he knows there is inconsistency in his testimony but the landlord must realize that their daughter is not a permanent occupant. DB testified that their daughter has been there off and on to help DB when BS was away for the last two years and it

only became an issue in January, 2016. DB testified that he is sure BS notified the landlord of this.

DB asked the landlord why they have not sent a letter before about their daughter staying. The landlord testified that neither tenant informed the landlord that their daughter had been there in the last two years. The tenant BS was notified that due to previous issues with her daughter that her daughter was not welcome on the property. There have been other letters sent to the tenant concerning this.

The landlord asked DB if their daughter was still living on the property. DB responded that she is there helping him to pack up. They realize she needs long term care and are now looking for a two bedroom place to rent. DB asked the landlord if they could stay until May 01, 2016.

The landlord testified that they are not willing to make any agreements to extend the tenancy as it would not be fair to other tenants and neighbours. Even since the Notice was served the landlord has continued to receive complaints about late night noise from the tenants' unit and the RCMP have been out to the tenants' unit. The tenants are not willing to take responsibility and are trying to justify their actions by saying everything is alright now.

DB testified that they were packing up and their daughter did make some noise around midnight. Someone called the police but after they came out nothing else happened.

DB testified that they seek an Order to cancel the Notice and seek an Order to allow access to the unit for their daughter. As the other tenant is currently away there are only two occupants in the unit and DB needs help as he is on disability so their daughter will stay with them until May 01, 2016.

Analysis

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 Tenancy) 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.

I am satisfied from the evidence before me that the tenants' daughter has been living at the unit as an additional occupant in breach of s. 13 of the tenancy agreement. The tenant DB's testimony was full of contradictions and I find his testimony lacked credibility. The landlord has sufficient evidence to show that the tenants' daughter has been living at the rental unit and by the tenants own written submissions and verbal testimony this daughter continues to reside at the unit.

While I appreciate that as parents the tenants want to do what is right for their daughter; the tenants are still bound by the terms of their agreement in renting this one bedroom unit. The tenants were given sufficient notice to get their daughter to move out of their unit and had ample opportunity to do so in January, 2016. The tenants choose not to abide by these written notices and have jeopardized their tenancy by allowing their daughter to remain in the unit. It is irrelevant if the tenant BS is currently away from home and only DB and their daughter are in the unit; the fact remains that this daughter is not a tenant of this unit and cannot reside there.

I find the grounds set out on the Notice are valid and therefore I dismiss the tenants' application to have the Notice cancelled.

The landlord is entitled to an Order of Possession effective two days after service upon the tenants pursuant to s. 55 of the *Act*.

As this tenancy will end I dismiss the tenants' application to allow access to and from the unit for the tenants or the tenants' guests.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

The landlord has been issued an Order of Possession effective **two (2) days** after service upon the tenants pursuant to section 55(1) of the *Act*. This Order must be served on the tenants. If the tenants remain in Possession of the rental unit and do not relinquish that possession to the landlord then the Order may be filed in the Supreme Court of British Columbia 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: March 16, 2016

Residential Tenancy Branch

