Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Borving Investments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, AS, OLC, FF

Introduction
This hearing dealt with an application by the tenants for orders setting aside a 1 Month Notice to End Tenancy for Cause; allowing the tenants to assign or sublet the rental unit; and compelling the landlord to comply with the Act, regulation or tenancy agreement. Both parties appeared and had an opportunity to be heard.

At the beginning of the hearing the tenants were adamant that they had not received any evidence from the landlord. The landlord said he had served the evidence package by registered mail and provided the Canada Post tracking number. A search of the Canada Post records revealed that the tenants had signed for the item on March 8. The tenants then said they had received the package and, with the exception of a statement from the building manager, it contained all the documents I had said were on the file.

No other issues regarding the exchange of evidence were identified.

Issue(s) to be Decided
- Does the landlord have cause to end this tenancy?
- If not, should the tenants be allowed to sublet the rental unit?
- What other orders, if any, should be made against the landlord?

Background and Evidence
The tenants were married in August of 2015. The female tenant is a young lawyer. They lived in a unit owned by the female tenant and her parents. This unit was purchased in December 2013 and the female tenant testified that her parents provided most of the purchase price.

The female tenant's parents and sister applied to immigrate to Canada six and a half years ago. They were finally approved at the end of November or beginning of December. One of the conditions of their approval is that they land in Canada on or before March 27. Since the date when the sister first submitted her application she has

married. She and her husband have an eleven-month-old child. The tenant is sponsoring both families; which means that she has assumed financial responsibility for them.

The tenants testified that they want to start a family so in December 2015 they started looking for a new place. After much searching they found this rental unit which was larger than most, very reasonably priced, and in a family-friendly neighbourhood. When they looked at this unit it was occupied by a family that included a toddler. They submitted an application for tenancy. The application included the questions: “Name of landlord” and “Reason for Leaving; to which the tenants responded; “My parents own the unit” and “they are moving in”.

Their application was accepted and on January 11, 2016 the parties signed a standard Residential Tenancy Branch tenancy agreement with no attachments for a one year term commencing February 1, 2016, and continuing thereafter as a month-to-month tenancy. The monthly rent of $1650.00 is due on the first day of the month.

The tenancy agreement states that the tenant may assign or sublet the rental unit to another person with the written consent of the landlord. It also states that if the landlord unreasonably withholds consent to assign or sublet the tenant may apply for dispute resolution.

On January 15 the tenant purchased air tickets for her sister, brother-in-law and baby; to arrive in Vancouver on February 10.

The tenants took possession of the rental unit on Saturday, January 30, 2016.

The tenants testified that they left their old furniture in their previous unit and got new furniture, including a couch and a bed, delivered to this unit after they took possession. They only moved their personal items in.

The tenants testified that they rented out the other unit for a short-term rental.

The tenants testified that their plan was that the sister and her family would stay with them until they got established and that they would continue to rent out the other unit. The female tenant explained that because of their business and work commitments it is going to take her parents some time to complete a permanent move to Canada. Her mother stayed with them in December before returning to Russia. Her father has been in Canada for a few months but will be going to Russia sometime this spring. The

current plan is that her parents will move permanently to Canada by next spring, at which time they will move into the unit they own with the female tenant.

When asked about the information given in the application for tenancy the female tenant said it was true; her parents will be moving into that unit - eventually.

The female tenant testified that after her sister arrived they started looking for an apartment for her. She described the stiff competition for rental accommodation and the small size of the units they looked at – too small to accommodate a crib, stroller and other equipment required for a baby. She said her sister did apply at several units but was always unsuccessful because as new immigrants neither her sister nor her brother-in-law have established a credit rating in Canada, and they are not yet employed.

The female tenant testified that her brother-in-law is not yet a permanent resident. He has applied for a work permit which they expect will be received in a couple of months. Once he has obtained a work permit he can start looking for work. Her sister has taken on some part-time work but it is difficult for her to do much more because she has a baby.

On February 17 the building manager saw the sister opening the door to the building and he asked her who gave her the FOB for the building. She told the building manager her sister, the tenant, had given it to her.

The male tenant testified that when he spoke to the building manager after this incident the building manager told him that babies were not allowed in the building because they were too noisy.

The next day the female tenant sent the landlord an e-mail complaining that the building manager told them that babies were not allowed in the building and that the tenants must provide the names and telephone numbers of their guests. The tenant stated that these kinds of statements are “inappropriate and moreover, illegal”. She pointed out that the building was advertised as family-friendly. She also stated that “this is not a communist country. I do not have to report and register my guests.” She concluded by saying that if anything like this happened again she would seek redress from the Residential Tenancy Branch, the Human Rights Tribunal and the courts.

The landlord responded by making four points:

- They are vigilant in maintaining security in the building and the resident manager was performing his job when he asks people he does not recognize how they have acquired access to the building.

- Regarding the building manager's comments about babies in the building: "As to the prior tenant [building manager] was new to the position and rented to the family without approval from our offices hence our comment to him in relationship to an adult oriented building. The tenant was a short term stay and therefore not an issue in this situation."
- "As to your situation you have guests residing in your suite at present and that is acceptable. Guests are permitted with the occupying tenant with the occasional exception of special approvals due to occupier's liability. Our common practise would be that guests are permitted for a four week period in line with the requirements of the Residential Tenancy Act."
- "If your guests are in fact guests then the matter is closed. If however you are not occupying the suite or your intent was to have guests occupy for an extended period of time then we have a problem, please advise our offices accordingly."

The male tenant testified that after this incident they decided they would sublet the unit to the sister and her family because they did not want the landlord to make an issue about the baby and they were concerned that the landlord would not accept his in-laws as tenants.

The tenants prepared a Request for Permission to Assign or Sublet on February 19 but did not submit it to the landlord until March 1. The request was accompanied by a letter in which the female tenant assumed responsibility for the sister's rent; gave background information about her sister and brother-in-law; advised that a "no babies" policy was discriminatory and illegal; stated how much they liked the building; and concluded that "we still have the intentions of living here long-term once my sister and her family move on."

The landlord responded the same day:

> "Please be advised that it is our company policy not to sublet any suite not only in [this] building but in all our buildings therefore your application in this regard is denied.
>
> Should your guest or invitees wish to apply for tenancy when another suite is available please advise us accordingly."

On March 3 the tenants applied to the Residential Tenancy Branch for an order allowing them to assign or sublet the unit because the landlord's permission had been unreasonable withheld.

Once the landlord was served with the tenants' application for dispute resolution it issued and served a 1 Month Notice to End Tenancy for Cause on the tenants. The reasons stated on the notice are:

- Breach of a material term that was not corrected within a reasonable time after written notice to do so.
- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The tenants promptly amended their claim to include a request for an order setting aside the notice to end tenancy and asking for aggravated damages.

In the hearing the landlord testified that they do not have a "no babies" policy but that when the parents of young children apply for tenancy they do check with the prospective neighbours as to whether there are any concerns. The landlord testified that many of the residents of this building are shift workers and the like to minimize any potential conflict between neighbours. Generally, there is no objection expressed by the existing tenants of the building. The landlord also testified that there are a number of children living in the building.

The landlord also testified that in this building, and in the other buildings they own or operate, security of the tenants is primary concern. They like to know who is living in the building and they do not like tenants giving access to parties who are unknown to them.

The landlord testified that a number of things about this situation made him nervous:

- The tenants did not disclose that they were sponsoring two families.
- These events took place within a very short time frame.
- This hearing was the first notification they had received that the female tenant's father was staying in the unit with her sister and her family.

The landlord stated that they would like to receive an application for tenancy from the tenant's family and have a signed tenancy agreement with them. At least then they would know who is in the building.

At first the tenants testified that they moved out of the rental unit on March 1. Later in the hearing they testified that they decided to move out after their request to sublet was denied by the landlord. They moved back into the unit co-owned by the female tenant and her parents. Their plan/hope is that the sister and brother-in-law will get jobs and

find their own place; they will move back into this rental unit; and the parents will move into the unit they own.

The tenants testified that they cannot afford a house in this market. After renting privately owned condos and then having to move because the owners have sold the unit they decided that renting a unit from a rental company would offer them a more stable living situation. The tenants also testified that their search of a rental unit in December and January was genuinely a search for a unit for them and not for the sister and her family.

The tenants testified that they do not have a written tenancy agreement with the sister and brother-in-law. The March and April rents have been paid from the tenants' bank account.

Analysis

To begin with, it must be noted that the tenants were not very credible witnesses. They were not truthful about a fact that was easily checked, i.e. were they served with the landlord's evidence package; they were truthful but misleading on the application for tenancy, i.e. "my parents are moving in" and not disclosing of the fact they were financially responsible for two other families; and they were inconsistent in their testimony as to when they decided to sublet the unit to the sister and her family and when they moved out of the rental unit.

The applicable law is summarized in *Residential Tenancy Policy Guideline 19: Assignment and Sublet.* The *Guideline* explains that "a sublease can convey substantially the same interest in the land as is held by the original lessee, however the sublease must be for a shorter period than the original lease in order that the original lessee can retain a reversionary interest in the property. . . Where an individual agrees to sublet a tenancy for the full period of the tenancy, and does not reserve the last day or some period of time at the end of the sublease, the agreement amounts in law to, and will be treated as, an assignment of the tenancy."

The agreement the tenants have with the sister and her family is open-ended. Although the tenants are hopeful that the other family will find work and their own place soon there is nothing that requires them to move out before the end of the one year term of the tenancy agreement. This amounts to an assignment of the tenancy agreement.

The tenancy agreement does not prohibit subletting or assignment; it echoes the provisions of section 34 of the *Residential Tenancy Act,* which states that a tenant must not assign a tenancy agreement or sublet a rental unit unless the landlord consents in

writing. The section also states that if the tenancy agreement is for a fixed term of six months or more, the landlord must not unreasonably withhold its' consent.

Section 65(1) allows an arbitrator, on application by a tenant, to order that a tenancy agreement may be assigned or a rental unit may be sublet if the landlord's consent has been unreasonably withheld contrary to section 34.

Section 47(1) allows a landlord to end a tenancy if the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34.

The structure of the *Act* is that consent to the assignment or sublet must be given by the landlord or an arbitrator, in advance of the change taking place; not that a tenant may apply to an arbitrator for retroactive approval of an assignment or a sublet that has already been entered into.

The tenants' evidence is that they moved out of the rental unit after the landlord had refused their application and before they had filed an application for dispute resolution, let alone received an order from an arbitrator allowing the assignment or sublet.

If the sister and her family had moved into the parents' unit and the tenants had stayed in the rental unit pending the outcome of this application, the tenants would have remained in compliance with their tenancy agreement. However, they did not.

I find that the tenants have purported to assign the tenancy agreement or sublet the rental unit without having the landlord's written permission or an arbitrator's order in advance. This is a permitted ground for ending a tenancy. Accordingly, I find that the 1 Month Notice to End Tenancy for Cause dated March 7, 2016 is valid and the tenancy ends the effective date of the notice, April 30, 2016.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed or the notice to end tenancy is upheld, the arbitrator must grant an order of possession of the rental unit to the landlord.

In the hearing the landlord stated that if the notice to end tenancy were upheld they would give the occupants of the rental unit a month to move out. Therefore, I grant the landlord an order of possession effective 1:00 pm, May 31, 2016. This extension is contingent upon the May rent being paid. If it is not, the landlord may apply for an amendment to this order.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated March 7, 2016, has been upheld and an order of possession effective **1:00 pm, May 31, 2016,** has been granted to the landlord.

All other claims by the tenants are dismissed.

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: April 26, 2016

Residential Tenancy Branch