



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, OLC

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated May 22, 2016
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenants by mailing, by registered mail to where the tenants reside on May 22, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on June 2, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated May 22, 2016?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a fixed term tenancy agreement that provided that the tenancy would begin on November 15, 2015, end on November 30, 2016 and become month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of

\$3250 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$1625 prior to the start of the tenancy.

The written tenancy agreement included the following provisions:

- The two tenants are identified as tenants and as adult persons occupying the rental premises
- **Only those listed above may occupy the premises. (Tenants, Adults listed under Occupants and Minor Occupants)**
- The Tenant shall not assign or sublet the premises **without the prior written** consent of the Landlord
- Additional occupants are defined as anyone residing in excess of 14 accumulative days in any calendar year.
- The tenancy agreement provided for a process of applying to the landlord for permission to have additional occupants reside in the rental unit.

The rental unit has 4 bedrooms. At the time the tenants entered into the tenancy agreement there was discussion that they would be finding roommates.

On March 17, 2016 the tenants e-mailed the landlord requesting permission to allow two sub-tenants to sublet two bedroom of the four bedroom rental property. The tenants gave the names of the proposed sub-tenants, their SIN number, DOB and employer references.

On March 22, 2016 the landlord responded asking for further information about the proposed subtenant. The e-mail states they would be sending a new tenancy agreement for the remainder of the lease and the rent would be increased to \$4000.

On March 30, 2016 the landlord e-mailed the tenants stating they would be sending out the new agreement today with adding the 2 additional occupants. The agreement will have the same end date.

On March 31, 2016 the tenants' emailed the landlord requesting that the landlord confirm that the two extra people are okay.

On March 31, 2016 the landlord responded in an e-mail to the tenants stating "Yes, that is why we are resigning the agreement. The new occupants will be in the agreement. So, yes you are allowed to have the 2 extra people."

The tenants testified the two extra people moved into the rental unit.

On April 28, 2016 the landlord provided the Tenants that did not identify the tenants and/or occupants and changed the term of the tenancy agreement to provide that at the end of the fixed term “the tenant must move out or negotiate a new term before the expiry of term.” It also stated that the proposed sub tenants were permitted.

The tenant testified the landlord failed to advise them of this change. They noticed the change on May 6, 2016 and objected to the landlord.

Grounds for Termination:

The Notice to End Tenancy relies on section 47(1)(d) of the Residential Tenancy Act. That section provides as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

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

Section 34 of 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.

Policy Guideline #19 includes the following:

Subletting

A sublease is a lease given by the tenant or lessee of residential premises to a third person (the sub-tenant or sub-lessee). A sublease can convey substantially the same interest in the land as is held by the original lessee, however such a 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. The sub-tenant

does not take on any rights or obligations of the original tenancy agreement that are not contained in the subagreement, and the original lessee remains the tenant of the original lessor, and is the landlord of the sub-tenant.

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.

Analysis:

The tenancy agreement provides that the tenant must not assign or sub let the premises without the prior written consent of the landlord. The landlord's form of agreement does not include the provisions of section 34(2) and (3) of the Act that is incorporated into all tenancy agreements in the province of British Columbia. The provision prevents the tenant from assigning or sub letting the premises. The tenants continue to reside in the rental unit. In my view that tenants have not sub-letted the premises and have not breached paragraph 13 of the tenancy agreement. The rental of a room to a roommate is not the sub let of the premises. On this basis alone the one month Notice to End Tenancy should be set aside.

The tenancy agreement provides that the two named tenants in the original agreement were the sole occupants and that only those named may occupy the premises. Paragraph 14 provides for a process whereby the tenant may apply to the landlord to obtain permission for additional occupants to occupy in the rental premises. It also provides that where the tenant failed to apply and obtain the necessary approval the landlord may at his option give immediate notice to end the agreement or may at his option end the tenancy agreement for breach of a fundamental term. Again the landlord's form of tenancy agreement is not consistent with the British Columbia Residential Tenancy Act. However, in my view the tenants made a written request and the e-mail of the landlord consented to the two new occupants moving into the rental unit.

On April 28, 2016 the landlord gave the tenants a form of lease that significant changed the previous agreement in that it changed the provisions from a month to month tenancy after the expiry of the fixed term to a requirement that the tenants must agree to a new fixed term failing which the tenants would have to vacate. I determined the landlord did not have a legal right to change this provision of the tenancy agreement. The original tenancy agreement continues to be in force with the addition that the landlord has given its permission for the tenant to have two additional occupants.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I order that the one month Notice to End Tenancy dated May 22, 2016 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. The tenants have been successful with this application. As a result I ordered that the landlord pay to the Tenants the cost of the filing fee in the sum of \$100.

The tenants are at liberty to deduct this sum from future rent. If the tenant is not able to reduce his rent payment to collect the \$100, a Monetary order has been issued to the Tenant. This Order must be served upon the Landlord and may be enforced through the Small Claims 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: June 29, 2016

Residential Tenancy Branch