



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, LRE, MNDC, O, OLC

Introduction

This was a hearing with respect to an application by the tenant to cancel a one month Notice to End Tenancy for cause and including claims for other matters, including the dispute of an additional rent increase, a claim for a monetary award, an order that the landlords comply with the Act, Regulation or tenancy agreement and a request to control the landlord's right to enter the rental unit. The hearing was conducted by conference call. The tenant and the named landlords called in and participated in the hearing.

The tenant said that he submitted documents and evidence before the hearing on June 17, 2016, including an amendment to his application for dispute resolution. The tenant said that he amended his application to include an application to cancel a 10 day Notice to End Tenancy for unpaid rent. The amendment and documents were not on the file and there was no indication that the tenant sent documents to the Residential Tenancy Branch before the hearing. The landlords testified that they did not receive the amendment or new documents from the tenant before the hearing. After the hearing was concluded I received copies of documents sent by the tenants

Issue(s) to be Decided

Should the one month Notice to End Tenancy dated May 5, 2016 be cancelled?
Has the tenant established that he has been charged an illegal rent increase?
Is the tenant entitled to a monetary award and if so, in what amount?
Should the landlord's right to enter the rental unit be controlled or restricted?
Should the landlord be ordered to comply with the Act, Regulation or tenancy agreement?

Background and Evidence

The rental unit is the upper portion of a house in Whistler. The tenant applied to cancel a one month Notice to End Tenancy for cause. He also requested other relief; he applied for a monetary award in the amount of \$1,200.00 and applied to dispute an alleged rent increase.

The landlords testified that the tenant was personally served with a one month Notice to End Tenancy for cause on May 5, 2016. The Notice to End Tenancy required the tenant to move out of the rental unit by June 30, 2016. The reasons given for the Notice to End Tenancy were that the tenant has engaged in illegal activity that has or is likely to jeopardize a lawful right or interest of the landlord. The landlord also claimed that the tenant has assigned or sublet the rental unit without the landlord's written consent.

According to the landlords the landlord gave the tenant the original signed form of tenancy agreement on October 1st, 2015. The tenant took the agreement to review but never returned it to the landlord. The tenant rented the rental property before October 2015 under prior tenancy agreements. The landlord's position is that in the absence of a tenancy agreement from the tenant, the arrangement has defaulted to a month to month tenancy

The landlord said that the tenant has been renting rooms in the rental property without written permission and he has been advertising rooms for rent on a short-term basis on an "AirBnB" website, contrary to the Whistler municipal bylaws. The landlords also complained that the occupants who have sublet from the tenant have been approaching the landlords to seek the landlord's intervention due to the tenant's unreasonable and unconscionable actions towards his subtenants.

The landlords submitted copies of "airbnb" ads said to have been placed by the tenant, advertising rooms for rent on a per night basis

The landlord submitted a statement from a subtenant who complained about the tenant's conduct and erratic behaviour towards her which caused her to move out of the rental property.

The tenant said at the hearing that he has applied to amend his application to dispute a 10 day Notice to End Tenancy for unpaid rent also served by the landlords and he claimed that the landlord was interfering with his mail. The tenant applied to dispute what he alleged was an illegal rent increase. He said that he amended his application to change the information related to the disputed rent increase. The tenant's documents, including the amendment was not received until after the hearing was concluded on June 17th so it has not been considered as part of the application before me at the hearing.

The tenant claimed that he was served with a 10 day Notice to End Tenancy for unpaid rent. He said the Notice was unfounded because the landlord had improperly raised the rent and then served the tenant with a Notice for unpaid rent when he withheld the unlawful increase. The tenant said the agreed rent is \$3,200.00 per month, not the sum of \$3,250.00 claimed by the landlord.

The tenant disputed the landlord's claim that he was engaged in a short-term rental business; he questioned the authenticity of the "Airbnb" advertisements produced by the landlord, but later said that he used the Airbnb website as a means to locate long term tenants to sublet to. The tenant testified that he has rented the rental unit from the landlords for several years and it was done on the understanding that he was intended to be the "leaseholder" of the property and it was up to him to find room-mates for the five bedroom house and to maintain and keep it in good order and now they are wrongfully accusing him of subletting without permission.

The tenant submitted that the landlords are attempting to evict him because of rising prices and the high demand for housing in Whistler. The tenant complained that the landlords have interfered with his relationship with his tenants to make it difficult for him to pay the rent. The tenant also testified that because of the severe housing shortage in Whistler he needs more time to find other suitable housing.

Analysis

The tenant sought to amend his application to include a dispute with respect to a 10 day Notice to End Tenancy for unpaid rent. The landlord has not made submissions with respect to a Notice to End Tenancy for unpaid rent and the tenant's documents were not received before the hearing was conducted and I will not address the tenant's amended claim because it is not before me on this hearing.

The evidence of the parties established that the tenant has occupied the rental unit for several years under successive fixed term tenancy agreements and he has sublet space in the rental unit to sub-tenants with the landlord's knowledge and consent over the course of the tenancy. I do not find that the fact that the tenant does not have the landlord's written permission to sublet constitutes grounds to end the tenancy, but, the landlord has provided documentary evidence to show that the tenant has been advertising the rental unit on the internet through "Airbnb" seeking short term rentals. The tenant disputed the landlord's documentary evidence, but he also acknowledged that he was advertising on "Airbnb" as stated by the landlord. The tenant contended that he was not seeking short stay visitors despite the express wording of the advertisements. I accept the landlord's testimony and documentary evidence that the municipal bylaws prohibit the use of the rental property for temporary tourist accommodation. The evidence, including copies of the tenant's advertisements, show

that he was advertising rooms for rent on a per night basis, in clear contravention of the bylaw. According to the municipal regulations, the unauthorized use of the property can result in fines of up to \$1,000.00 per day to the property owner.

The Residential Tenancy Policy guideline with respect to "Illegal Activities" contains the following comment:

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act provide that a landlord may terminate a tenancy for illegal activity that meets one or more of the following requirements:

- has caused or is likely to cause damage to the landlord's property
- has adversely affected or likely to adversely affect the quiet enjoyment, security, safety or physical wellbeing of another occupant of the residential property
- has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.¹

This Guideline is intended to clarify relevant issues such as the meaning of "illegal", what may constitute "illegal activity" and circumstances under which termination of the tenancy should be considered.

The Meaning of Illegal Activity and What Would Constitute an Illegal Activity

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

Based on the evidence submitted I find that the tenant has advertised and offered the rental unit as temporary short stay accommodation. I find that this constitutes Illegal activity as discussed in the Policy Guideline because exposes the landlord as property owner to significant liability in the form of fines that may be levied; as such I find that the tenant's activities jeopardize a lawful right or interest of the landlord.

I find that the landlords have established that there are sufficient grounds to justify the issuance of the one month Notice to End Tenancy for cause. I therefore dismiss the tenant's application to cancel the Notice to End Tenancy without leave to reapply.

The tenant has not submitted documentary evidence to support the claim for a monetary award in any amount and the claim for a monetary award is dismissed without leave to reapply.

Section 55(1) of the *Residential Tenancy Act* provides that

- 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 landlords' Notice complies with the requirements of the *Act*. The effective date of the Notice was June 30, 2016 and the landlords are therefore entitled to an order of 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.

Conclusion

The tenant's application has been dismissed. The landlords have been granted an order of possession.

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 17, 2016

Residential Tenancy Branch