



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PENTICTON AND AREA COOPERATIVE ENTERPRISE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC. FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a One Month Notice to End Tenancy for cause and to recover the filing fee from the landlord for the cost of this application.

The parties attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord testified that they had sent in late evidence; however, this was not received by the Arbitrator for the hearing pursuant to rule 3.15 which states that evidence must be received by the Residential Tenancy Branch from the respondent, seven days before a hearing. The landlord 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

Is the tenant entitled to dispute the Notice to End Tenancy?

Background and Evidence

The parties agreed that this tenancy started on April 01, 2010 for a month to month tenancy. This was a verbal agreement between the parties. The tenant rents a room and shares common areas with two other tenants. The tenant pays a monthly rent of \$375.00 which is due on the 1st of each month.

The landlord testified that they rent the property from the owner of the property and sublet it out to individual tenants. Two of the tenants informed the landlord of another tenants hoarding in the unit. The landlord contacted Interior Health to gain help for the hoarding tenant but Interior Health said the landlord must first get the fire department involved. The landlord arranged a fire inspection of the property when the fire department came out they said they could not ignore what was going on in the property and they provided a detailed report on May 16, 2016. In this report it states that caution must be used regarding an extension cord in this tenant's room. Caution using candles in the other tenant's room; to remove storage from an exit corridor. This storage belongs to another tenant; to reduce storage in a bedroom. This was another tenant's room; to unplug appliances when not in use. This refers to appliances in the common areas. Another follow up inspection was completed on June 16, 2016; however, this report is illegible.

The landlord testified that they only got the fire department involved informally so they could get help for this other tenant. When the owner of the property found out about the report he gave the landlord an eviction notice to end the tenancy for July 31, 2016. The landlord testified that they have a commercial lease agreement with the owner of the property who is their landlord and they sublease the unit under the *Residential Tenancy Act*.

The landlord testified that as their tenancy will end on July 31, 2016 then the tenants must also vacate the rental unit as per their commercial agreement. They can no longer remain as sublease tenants if their landlord no longer has a tenancy for this property.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for cause by putting it under his door on June 07, 2016. A copy of the Notice has been provided in documentary evidence by the tenant. The Notice has an effective date of July 31, 2016 and provides the following reason to end the tenancy:

- 1) *The tenant or a person permitted on the residential property by the tenant has*
 - (ii) *Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
 - (iii) *Put the landlord's property at significant risk;*

The tenant disputed the landlord's claims. The tenant testified that the tenant who has been hoarding is responsible for the negative fire department report. The only thing mentioned on the report to do with the tenant was the extension cord in his room. None of the reasons given on the One Month Notice apply to the tenant and as they all have separate verbal tenancy agreements with the landlord then the landlord cannot make them all responsible for this other tenant's actions in creating a fire hazard. The tenant testified that they notified the mental health team about that tenants hoarding. The tenant testified that his room is kept clean and orderly.

The tenant seeks an Order for the Notice to be cancelled and for his tenancy to continue.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows: Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

When considering a One Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

After consideration of the above, I find there was insufficient evidence to prove the reasons listed on the One Month Notice issued June 07, 2016. It is my decision that one of the other tenants has caused the fire risks associated with this property and not this tenant. Furthermore no breach letter or warning was given to the tenant before the issuing of the One Month Notice so a tenant could correct the situation prior to receiving a One Month Notice. It appears that the landlord issued the One Month Notice because they were also issued with a Notice to End Tenancy under the terms of their commercial lease.

The landlords have not provided a copy of the commercial lease in evidence for this hearing to show if their landlord ends their tenancy that the sublease tenants must also move out. Further to this the landlord did not provided a tenancy agreement to the tenant outlining that this was a sublease tenancy and the tenants' rights or obligations under that sublease.

The Residential Tenancy Policy Guidelines # 19 provides guidance on the matter of subletting and assignments. It states, in part, that when a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and a new agreement (usually called a sublease) is typically entered into by the original tenant and the sub-tenant. The original tenant remains the tenant of the original landlord, and, assuming that the original tenant moves out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant.

Unlike assignment, a sublet is temporary. In order for a sublease to exist, the original tenant must retain an interest in the tenancy. While the sublease can be very similar to the original tenancy agreement, the sublease must be for a shorter period of time than

the original fixed-term tenancy agreement – even just one day shorter. The situation with month-to-month (periodic) tenancy agreements is not as clear as the Act does not specifically refer to periodic tenancies, nor does it specifically exclude them. In the case of a periodic tenancy, there would need to be an agreement that the sublet continues on a month-to-month basis, less one day, in order to preserve the original tenant's interest in the tenancy.

The sub-tenant's contractual rights and obligations are as set out in the sublease. Generally speaking, the sub-tenant does not acquire the full rights provided to tenants under the *Act*. For example, if the landlord ends the tenancy with the original tenant, the tenancy ends for the sub-tenant as well. The sub-tenant would not be able to dispute the landlord ending the tenancy with the original tenant; it would be up to the original tenant to dispute the notice.

As the landlord's tenancy with their landlord is a commercial tenancy then there may be other terms concerning this sublease then provided for under the *Residential Tenancy Act* which governs this tenancy. As I have no jurisdiction over commercial tenancies then I decline to comment on what these terms may be. However, as the landlord has attempted to evict the tenant for the reasons as shown on the One Month Notice then it is those reasons that are under dispute today and for which this decision is written.

Accordingly, I find the landlord has not met the burden of proof regarding the reasons to end the tenancy as there is insufficient evidence that the tenant has seriously jeopardized the health, safety or lawful right of another occupant or the landlord or that the tenant has put the landlord's property at significant risk.

I therefore uphold the tenant's application and the One Month Notice issued on June 07, 2016 is hereby cancelled and is of no force or effect.

The landlord must provide evidence to the tenant to show that the tenancy must end as a provision of their commercial lease. The parties are at liberty to pursue the matter of

ending the tenancy through the provisions of the commercial lease through another legal forum or for further dispute resolution under the *Act*.

Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause is cancelled and the tenancy will continue until legally ended under the *Act*.

As the tenant has been successful in setting aside the Notice, the tenant is entitled to recover the \$100.00 filing fee for this proceeding. As this tenancy may potentially end at the end of July, 2016 I have issued a Monetary Order for **\$100.00** to the tenant pursuant to s. 72(1) of the *Act*. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: July 25, 2016

Residential Tenancy Branch