



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GG & A Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, FF

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Notice to End Tenancy for Cause and to recover the fee for filing this Application.

Legal Counsel for the Tenants stated that on August 12, 2016 the Application for Dispute Resolution and the Notice of Hearing were served to the Landlords, via courier. The Agent for the Landlord acknowledged that these documents were received by the Landlord.

On September 23, 2016 the Landlords submitted 9 pages of evidence to the Residential Tenancy Branch. On September 26, 2016 the Landlords submitted another 38 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlords stated that this evidence was delivered to the office of the Tenants' legal counsel on September 26, 2016. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On September 21, 2016 the Tenants submitted 41 pages of evidence to the Residential Tenancy Branch. Legal Counsel for the Tenants stated that on September 21, 2016 these documents were served to the Landlords, via courier. The Landlords acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlords and the Tenants agree that:

- the parties entered into a fixed term tenancy agreement, the fixed term of which ran from May 01, 2015 to April 30, 2016;
- the parties entered into a second fixed term tenancy agreement, the fixed term of which runs from May 01, 2016 to April 30, 2018;
- clause 18 of the tenancy agreement stipulates that “Tenants and guests shall use the premises for private residential purposes only and not for any illegal or unlawful or commercial or business purposes”;
- rent of \$4,080.00 is due by the first day of each month;
- the One Month Notice to End Tenancy for Cause that is the subject of this dispute declares that the Tenants must vacate the rental unit by August 31, 2016; and
- the One Month Notice to End Tenancy for Cause that is the subject of this dispute declares that the Landlord is ending the tenancy because there has been a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after receiving written notice and the Tenants have assigned or sublet the rental unit without the Landlord’s written consent.

The Agent for the Landlords stated that:

- the One Month Notice to End Tenancy for Cause that is the subject of this dispute was placed in the Tenants’ mail box on July 29, 2016;
- the Landlords mistakenly declared that the Landlords wanted to end the tenancy on the basis that the Tenants have assigned or sublet the rental unit without the Landlord’s written consent;
- the Landlords do not wish to end this tenancy on the basis that the Tenants have assigned or sublet the rental unit without the Landlord’s written consent;
- the Landlords only wish to end this tenancy on the basis that there has been a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after receiving written notice to correct the breach;
- the Tenants breached clause 18 of the tenancy agreement by advertising the rental unit as a vacation rental;
- the Tenants breached clause 18 of the tenancy agreement by allowing a vacationing family to stay in the unit for 20 days, in exchange for money, in July and August of 2016;
- the Tenants were served with a letter, dated July 25, 2016, in which the Tenants were advised that they must stop “any commercial activity on the premises” by July 28, 2016; and
- after serving the letter of July 25, 2016 the Landlord gave the Tenants authority to allow the vacationing family to remain in the rental until August 02, 2016.

Legal Counsel for the Tenant stated that:

- the One Month Notice to End Tenancy for Cause that is the subject of this dispute was received by the Tenants on August 03, 2016 or August 04, 2016;
- the Tenants advertised the rental unit as a vacation rental for a brief period of time;
- the Tenants allowed a vacationing family to stay in the unit for 20 days in exchange for money in July and August of 2016;
- on July 26, 2016 the Tenants received the letter, dated July 25, 2016, which advised them to stop “any commercial activity on the premises”;
- after receiving the letter of July 25, 2016 the Tenants communicated with the Landlords and were given authority to allow the vacationing family to remain in the rental until August 02, 2016;

- the Tenants have not permitted any other party to stay in the rental unit, in exchange for money, since August 02, 2016;
- the Tenants removed the advertisement for the rental unit from the internet on July 29, 2016;
- there was a delay in removing the advertisement from the internet as the Tenants initially had concerns that removing the advertisement would impact the insurance coverage being provided for the vacation rental; and
- there was a delay in removing the advertisement from the internet as the Tenants were out of the country.

Analysis

Section 47(1)(h) of the *Act* authorizes a landlord to end a tenancy if a tenant has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. (Emphasis added)

Even if I concluded that the Tenants breached clause 18 of their tenancy agreement by advertising the rental unit as a vacation rental at any time prior to July 26, 2016 and/or by allowing a third party to occupy the unit as a vacation rental unit at any time prior to July 26, 2016, I would find that the Landlords do not have the right to end this tenancy pursuant to section 47(1)(h) of the *Act*.

In reaching this conclusion I was heavily influenced by the undisputed evidence that the Landlords did not direct the Tenants, in writing, to stop any commercial activity in the rental unit until the Landlords served them with a letter dated July 25, 2016, which the Tenants received on July 26, 2016. I find that the Tenants stopped using the rental unit as a vacation rental within a reasonable time of receiving this letter. As the Tenants stopped using the rental unit as a vacation rental unit within a reasonable time of receiving written notice of the breach, I find that the Landlords do not have the right to end the tenancy pursuant to section 47(1)(h) of the *Act*.

In determining that the Tenants stopped using the rental unit for a commercial purpose within a reasonable time of receiving written notice of the breach I was influenced, in part, by the undisputed evidence that the Tenants removed the advertisement for the rental unit from the internet on July 29, 2016. As the advertisement was removed three days after the Tenants received the notice of the breach I find that they responded in a reasonably timely manner, given that they were out of the country on holidays.

In determining that the Tenants stopped using the rental unit for a commercial purpose within a reasonable time of receiving written notice of the breach I was influenced, in part, by the undisputed evidence that the vacationing family that was in the rental unit on July 25, 2016 left the unit on August 02, 2016. Given that the Landlords gave the Tenants permission to allow the vacationing family to remain in the unit until August 02, 2016, I find that the Tenants complied with the Landlords' direction within a reasonable time.

In determining that the Tenants stopped using the rental unit for a commercial purpose within a reasonable time of receiving written notice of the breach I was influenced, in part, by the undisputed evidence that the Tenants have not advertised the rental unit as a vacation rental

unit nor have they permitted any other party to stay in the rental unit, in exchange for money, since August 02, 2016.

In adjudicating this matter I have placed no weight on the Landlords' declaration that all commercial activity at the rental unit must cease by July 28, 2016. I find that this was an arbitrary date imposed by the Landlords which, in these circumstances, was not reasonable. As the date imposed by the Landlords was not reasonable, I find that the Tenants were not obligated to comply with that date.

As I have determined that the Landlords have submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47(1)(h) of the *Act*, I set aside the One Month Notice to End Tenancy that is the subject of this dispute.

I find that the Tenants' Application for Dispute Resolution has merit and that they are entitled to recover the fee for filing this Application.

Conclusion

The One Month Notice to End Tenancy that is the subject of this dispute is set aside. This tenancy continues until it is ended in accordance with the *Act*.

Pursuant to section 72(2) of the *Act*, I authorize the Tenants to reduce one monthly rent payment by \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

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: October 04, 2016

Residential Tenancy Branch