



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, O, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated October 28, 2016 ("1 Month Notice"), pursuant to section 47;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The male tenant and female tenant (collectively "tenants"), the tenants' male advocate and female advocate (collectively "advocates") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The male advocate is the tenants' son and the female advocate is the tenants' daughter-in-law. The tenants confirmed that their advocates had authority to speak on their behalf at this hearing. The landlord confirmed that he had authority to speak on behalf of his wife, "landlord SA," the other landlord owner of this rental unit. This hearing lasted approximately 84 minutes in order to allow both parties, particularly the landlord who spoke for most of the hearing time, to fully present their submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' Application. The landlord confirmed that he did not submit any written evidence for this hearing.

The landlord testified that the tenants were served with the landlord's 1 Month Notice to End Tenancy for Cause, dated October 28, 2016 ("1 Month Notice") on the same date by way of leaving a copy in their mailbox and sending it by registered mail. The landlord provided a Canada Post tracking number for the registered mail, verbally during the hearing. The landlord said that the tenants signed for the mail package on November 3,

2016. The female advocate confirmed that she received the 1 Month Notice in the mailbox on October 28, 2016 and verbally advised the tenants about it. The tenants confirmed that they received the 1 Month Notice on November 2, 2016 when they returned from their trip out of town. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were duly served with the landlord's 1 Month Notice on November 2, 2016 when they returned to the rental unit.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to correct the male tenant's first name, as he used his nickname rather than his legal name in the application. The male tenant consented to this amendment. There is no prejudice to the landlord in making this amendment, as it ensures that this decision and monetary order are properly binding and enforceable against the male tenant.

The tenants confirmed that they did not require any "other" remedies as originally claimed for in their application. Accordingly, this portion of the tenants' application is withdrawn.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for cause?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties and their advocates, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. The tenants were the sellers of this rental unit pursuant to a contract of purchase and sale, dated March 16, 2016 ("CPS"). The CPS was assigned to the landlord named in this application as well as his wife, landlord SA, by the initial buyer, DB ("buyer"), pursuant to an addendum to the CPS, dated June 7, 2016 ("second addendum"). The second addendum reaffirmed that the CPS was in place and all terms and conditions remained the same. The "first addendum," dated June 6, 2016, changed the completion date from June 29, 2016 to July 12, 2016 and the possession/adjustment date from June 30, 2016 to July 13, 2016. In clause 3 of the CPS, the buyer and sellers agreed that the sellers would rent back the property starting

immediately after the completion date for \$1.00 per month until June 30, 2017, and the sellers could leave any time prior to that date. The tenants said that the purchase price factored into account that the tenants would be renting back the property for the above time period and no additional security, pet damage deposits or rent was being paid. Both parties agreed that the same realtor was used for the CPS and addendums and that the landlord has regular contact with this realtor. All of the above documents were provided for this hearing.

As per clause 3 of the CPS, the sellers were also required to continue to pay for all utilities, cable and internet services while living there. The tenants provided a copy of their December 5, 2016 profile with a gas utility company, listing the rental unit address and phone number, as well as a copy of their phone and internet bill from November 23, 2016, showing their phone number associated with the rental unit. The male tenant provided a copy of his driver's license issued on August 5, 2014 and expiring on August 1, 2019, indicating the rental unit as his address. The tenants said that they still use the rental unit for their mailing address.

Both parties agreed to the following facts. The tenants and the buyer then entered into a written tenancy agreement on a Residential Tenancy Branch ("RTB") form, which was signed by the buyer on July 6, 2016 and the two tenants on June 23, 2016. A copy of this agreement was provided for this hearing. The tenancy began on July 14, 2016 for a fixed term of one year, ending on July 14, 2017. The buyer and both tenants initialled beside a handwritten provision which states "seller can leave at anytime without notice." Under payment of rent, security deposit and pet damage deposit in the written tenancy agreement, the parties have indicated the number "0" for each section. The "third addendum," dated July 5, 2016, to the CPS indicates that the landlord agreed with all terms of the written tenancy agreement between the buyer and tenants and that all other terms and conditions remained the same. The tenants continue to reside in the rental unit. The rental unit is a four-bedroom, two-bathroom, two-level house.

The tenants seek to cancel the landlord's 1 Month Notice. The tenants also seek to recover the \$100.00 filing fee paid for this application.

Both parties agreed that the 1 Month Notice indicates an effective move-out date of November 30, 2016. The landlord issued the notice for the following reason:

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

The landlord testified that the tenants have sublet the rental unit to four other occupants and a dog, without the landlord's written permission. He said that he drove by the rental unit a number of times and it was empty. He said that one day he saw people moving in

so he approached them and asked questions. He said that the two advocates advised him that they were moving into the rental unit with their own two children as well as their dog. He said that the advocates told him that the tenants were moving out of the unit.

The tenants said that they are transitioning into a new home and are slowly going through all of their personal belongings and furniture in the rental unit. The male tenant said that he sleeps at the rental unit and both tenants are at the rental unit two to three days per week. The two advocates said that they live at the rental unit with their two children and dog. They said that they are waiting for the renovations on their house to be completed and will leave the rental unit once they are done.

The tenants testified that they had a verbal agreement with the buyer and the realtor in order for the tenants, the two advocates, and the advocates' two children to live in the rental unit with their dog. The tenants stated that they occupy one room, the two advocates occupy another room, and the advocates' two children each occupy their own room, totalling four rooms in the house. The tenants claimed that they did not assign or sublet the rental unit to their children or grandchildren, as they are simply sharing the house together and the tenants have not moved out of the rental unit. The tenants explained that when they initially filed their application at the RTB, they were unsure of the relief to claim because they did not understand the meaning of "sublet" or "assignment" so they thought they had sublet the unit and believed they needed permission to sublet and an order of possession for the unit. They maintained that they later talked to the RTB and clarified their application to remove this relief, after being told the meaning of "sublet" and "assignment."

The landlord said that the realtor did not tell him about the above agreement for additional occupants to live in the rental unit with the two tenants. He stated that his lawyer advised him to issue the 1 Month Notice to the tenants because of liability and insurance concerns regarding additional occupants in the rental unit. He explained that the two advocates were not named on the written tenancy agreement and he is concerned about the state of the property when the tenants vacate since no pet damage or security deposits were taken from the tenants. The landlord maintained that only the two tenants were specifically named in the CPS and the addendums, to live in the rental unit. The landlord claimed that the tenants were only supposed to remain in the unit for "a few months" after the completion date of the CPS. When I questioned the landlord as to the CPS and the tenancy agreement stating that the tenancy was for one year and not "a few months," he said that was what he was told by the buyer and the realtor.

Analysis

I find that a tenancy agreement exists between the two tenants and the landlord named in this application. I find that the landlord was assigned the rights and responsibilities of the original buyer in the CPS and three addendums. I also find that the landlord was assigned the written tenancy agreement by the buyer, as indicated in the third addendum to the CPS. I find that a tenancy was created by way of the CPS and the written tenancy agreement and the value of the rent was accounted for in the purchase price for this rental unit. Therefore, no additional rent was paid, nor were security or pet damage deposits paid to the landlord.

In accordance with section 47(4) of the *Act*, the tenants must file their application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenants received the 1 Month Notice on November 2, 2016 and filed their application on November 4, 2016. Accordingly, I find that the tenants' application was filed within the ten day limit under the *Act*. Where tenants apply to dispute a 1 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

RTB Policy Guideline 19 states the following, in part, with respect to assignments (emphasis added):

*Assignment is the act of **permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant** of the original landlord.*

RTB Policy Guideline 19 states the following, in part, with respect to subletting and occupants (emphasis added):

C. SUBLETTING

*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.*

...

The sub-tenant typically pays rent to the original tenant...

...

Occupants/roommates

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party...

...

*When determining whether a One Month Notice to End Tenancy (form RTB-33) for cause was issued properly, the arbitrator will examine a number of factors, including **the terms of the tenancy agreement between the original landlord and the tenant, whether the agreement contains terms restricting the number of occupants or the ability of the tenant to have roommates and the intent of the parties.** As the facts of each case differ, an arbitrator will have to **consider all the evidence submitted by the parties** when making a determination.*

As per the definition above, I find that the tenants have not assigned the rental unit to the two advocates. I find that the tenants did not permanently transfer their rights under the written tenancy agreement to the two advocates. The tenants did not vacate the rental unit, they still live there and have personal belongings and property there.

As per the definition above, I find that the tenants have not sublet the rental unit to the two advocates. The tenants did not vacate the rental unit, they still live there and have personal belongings and property there. The tenants did not enter into a written tenancy agreement with the two advocates. The tenants do not collect any rent from the two advocates. The two advocates do not have exclusive possession of the rental unit. The tenants did not agree on a defined tenancy term with the two advocates, that is shorter than the parties' tenancy end date of July 14, 2017. The two advocates said that they might move out of the rental unit earlier if their home renovations are completed, but there is no defined date and this may not happen at all.

I find that the two tenants had a verbal agreement with the buyer and realtor to rent back the rental unit and for the two advocates, the advocates' two children, and their dog to occupy the rental unit as a family together. The landlord was unable to dispute this evidence. He said that he did not know what the original agreement was between the buyer and tenants, nor was he present during the tenants' discussions with the realtor. I also find that the landlord failed to submit any documentary evidence at all for

this hearing in order to support his claims. Neither the buyer nor the realtor attended the hearing in order to testify, despite the fact that the landlord said that he was in regular contact with both of them. The landlord agreed that there was miscommunication between himself, the realtor and the buyer. Despite the landlord's contentions, the CPS and addendums do not state that the sellers will be the sole occupants of the rental unit.

Neither the CPS nor the written tenancy agreement restricts the number of occupants in the rental unit. These documents do not state that no pets are allowed in the rental unit. Although only the two tenants are named on the CPS and the written tenancy agreement, these are simply the two people defined as sellers and tenants. The other four people are occupants in the rental unit. If the landlord wanted to restrict the number of occupants or pets in the rental unit, he could have provided for it in the written tenancy agreement or the third addendum to the CPS, which only states that he "agreed" with the terms of the written tenancy agreement and all other terms and conditions remained the same. I do not find six total occupants and a dog to be an unreasonable number of occupants in this rental unit since it is a four-bedroom house with two bathrooms.

Accordingly, I find that the landlord has not met his burden to show that he issued the 1 Month Notice for a valid reason. I find that the tenants have not assigned or sublet the rental unit to the two advocates and the advocates' two children. I find that these additional four people are occupants that are authorized to be in the rental unit as per the realtor's, buyer's and tenants' original verbal agreement. The landlord's 1 Month Notice, dated October 28, 2016, is cancelled and of no force or effect. The landlord is not entitled to an order of possession for cause. This tenancy continues until it is ended in accordance with the *Act*.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee paid for their application, from the landlord.

Conclusion

The landlord's 1 Month Notice, dated October 28, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I issue a monetary order in the tenants' favour in the amount of \$100.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the

landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenants' application for other unspecified remedies is withdrawn.

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: December 21, 2016

Residential Tenancy Branch