DECISION

Dispute Codes OPC, MNDC, CNC, OLC and FF

Introduction

This hearing was convened in response to applications by both parties pursuant to the *Residential Tenancy Act* (the "*Act*") for Orders as follows:

In the application from the corporate landlord and landlord KG (the "landlord") identifying tenant BB as the respondent, the landlord requested:

- an Order of Possession for Cause, pursuant to section 47; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The application from tenant BB and CW, identifying solely the corporate landlord as respondent, requested:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice");
- a Monetary Order pursuant to section 67 for compensation to cover moving and rental expenses;
- an Order for the landlord to comply with the *Act*, pursuant to section 62; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

On November 29, 2016 BB and CW amended their Application for Dispute Resolution by adding a monetary claim of $8,379.76 to their original application. This amendment was served by hand to the landlord on November 29, 2016.

Those attending on behalf of both parties confirmed receipt of each other's Applications for Dispute Resolution hearing package ("Applications"). In accordance with section 89 of the *Act*, I find that both the landlord and tenant were duly served with the Applications.

Issue(s) to be Decided

- Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?
- Is the tenant entitled to a monetary award to cover moving costs?
- Should an order be issued to the landlord requiring the landlord to comply with the *Act*?
- Is either party entitled to the recovery of their filing fees?

Background and Evidence

The tenancy in question began on August 1, 2014 and was entered into between the landlord ("KG") and tenants "BB" and "WP". This written agreement was for a fixed term of 1-year. Monthly rent was set at $1,200.00 and a damage deposit, still held by the landlord of $600.00 was collected. Following the passing of 1 year, the tenancy continued on a month-to-month basis.

In March 2015, tenant WP moved out of the apartment and occupant AM occupied the suite from March to May 2015. Tenant BB remained in the suite.

In May 2015, occupant AM moved out and was replaced by occupant EM. Occupant EM lived in the unit from May to August 2015. BB remained in the suite.

On August 1, 2015, occupant EM moved out of the rental property and CW moved in. CW currently lives at the property with BB.

No new tenancy agreements were ever signed between any of the occupiers and the landlord. Evidence was presented during the course of the hearing that the landlord agreed to and was aware of this informal landlord-tenant relationship, resulting in a series of occupants being present in the suite.

During the course of 2016, the relationship between Tenant BB, Occupant CW and the landlord broke down. On November 11, 2016, the landlord issued a 1 Month Notice for cause. The landlord cited CW's subletting of the rental unit without written permission as reason for cause.

On November 11, 2016, CW and BB submitted an Application for Dispute Resolution ("Application for Dispute") seeking to cancel the 1 Month Notice and seeking an Order to have the landlord comply with the section 62(3) of the *Act*.

Specifically, CW and BB cited the following as alleged breaches of the *Act* by the landlord;

- A notice of rent increase to begin February 1, 2017 exceeding 3.7%;
- An unfinished renovation project;
- A letter written by BB and CW to the corporate landlord outlining expectations and requests on the tenancy;
- Failure to complete a tenancy agreement proposed to BB dated November 1, 2016 excluding CW;
- A note posted in the shared laundry room by the corporate landlord threatening residents with removal of their property; and
- A cease and desist letter from a law firm representing the corporate landlord addressed to BB.

On November 29, 2016, BB and CW amended their application to include a Monetary Order seeking to have costs awarded to cover moving expenses and six month's rent.

Analysis – 1 Month Notice

The landlord issued the 1 Month Notice for Cause citing CW's subletting of the rental unit without obtaining the landlord's written permission. Section 34 of the *Act* states:

> **34** (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit

The landlord testified and provided written evidence that CW was attempting to sublet her room in October 2016 without having received written permission to do so. While BB had not sought or obtained the landlord's consent for CW's tenancy, the landlord did not challenge the nature of their relationship. The evidence suggests that the landlord accepted the fact CW was living as a tenant in the suite, over a period of months. Evidence was produced, demonstrating that CW would communicate regularly with persons from the corporate landlord.

Tenant BB acknowledged that CW had advertised on social media to sublet her room for one month, however; she explained that as soon as CW realized her error she removed the post and did not further consider subletting.

At first instance, it would appear CW was trying to sublet her suite. In fact she had placed an advertisement for her room. This shows that CW intended to sublet without written permission, a fact that could provide grounds for the issuance of a 1 Month Notice had she moved forward with accepting someone as a new occupant. She never took this step.

Policy Guideline #19 of the *Residential Tenancy Policy Guideline* provides some direction on other factors that must be considered prior to the proper issuance of a 1 Month Notice. It is noted;

> 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 of the evidence submitted by the parties when making a determination.

Page 2 of the original tenancy agreement entered into by BB and WP and submitted by the landlord as evidence contains a clause noting that only two people shall occupy the unit and that there is to be no subletting. Despite the presence of this clause, much evidence was presented by the tenant that the relationship between the tenant and landlord has largely been informal and several “tenants” were granted short term occupancy.

The tenant submitted as evidence, letters from AM and EM, two past occupants of the rental unit who stayed in the unit for 3 and 4 months respectively. These letters explained that on occasion, the landlord met with the occupants and maintained an informal relationship with them. The landlord disputed having knowledge of these occupants; however, I am satisfied based on the evidence and testimony of BB that the landlord was aware of these new occupants. At no point did the landlord ever question CW’s occupation and evidence was provided that the landlord communicated directly with CW concerning matters related to the rental unit. Furthermore, CW was in fact given the cell phone number of a landlord’s family member/representative so that she could contact him directly via text. As such and on a balance of probabilities, I find that while CW did not seek or obtain written permission from the landlord to sublet, a relationship existed between the landlord

and tenant whereby a blind eye was turned to this clause and short-term rentals without prior written permission were deemed permissible. Although CW took initial steps to sublet by advertising for a new occupant, she realized this was a mistake and withdrew her advertisement. She never did take the steps to sublet and hence, there was no breach of the *Act*. I decline the landlord's application for possession of the rental unit.

Analysis – Monetary Order

The request for a Monetary Order amended to the Application for Dispute Resolution submitted by CW and BB is based on speculative costs that BB and CW anticipated facing during the course of their potential relocation. Section 67 of the *Act* provides direction on when I can award compensation for damage or loss. It reads:

> …if damage or loss results from a party not complying with this *Ac*t, the regulations or a tenancy agreement, the director may determine the amount of, and or order that party to pay, compensation to the other party.

As I have declined the landlord's 1 Month Notice to end the tenancy, there is little reason to award any costs for a move. Furthermore, while I appreciate the fact that the tenants explained in their testimony that they are basing their monetary claim on perceived pressures from the landlord which has left them feeling as though they have no option *but* to move from the rental property, there are no provisions in the *Act* to award damages for this situation. No damage or loss has resulted from a party not complying with this *Act*, the regulations or a tenancy agreement. I dismiss BB and CW's application for a Monetary Order without leave to reapply.

Analysis – Directing the Landlord to comply with the *Act*

The tenant provided detailed written submissions and limited testimony seeking an order to direct the landlord to comply with *Act*. Specifically, the tenant sought to –

1. Limit the rent increase set to come into effect on February 1, 2017 to the legislated amount of 3.7%

As the landlord has not submitted any formal notice advising the BB and CW of a rental increase, I cannot order the landlord to comply with a proposed increase that has not yet taken effect.

2. Compel the landlord to complete repairs to the rental unit's ceiling

I accept the landlord's testimony that all repairs to the ceiling had been completed and no further work within the rental unit was planned. As such the tenant's request in point 2, to have the landlord complete the repairs on the unit's ceiling is moot.

3. To compel the landlord to do 8 things set out in a letter written by BB and CW to the corporate landlord outlining expectations and requests concerning the tenancy;

I will now go through these individually.

i) ***A request that the landlord be ordered to limit proposed rental increases in February 2017****;*

-This issue concerning rent was discussed above in point 1on page 5 of this decision

ii) ***A request that the landlord be ordered to provide a physical copy of the rental contract within one week of delivery of the demand letter****;*

-A copy of the original Tenancy Agreement was provided by BB in the evidence package submitted for the hearing. BB's demand for a physical copy of the rental agreement has therefore, apparently, been met.

iii) ***A request of a physical copy of the move-in condition inspection report****;*

-Section 24(2)(c) describes the consequences of failing to provide a move-in condition inspection report. This is of no force or effect at this time because nothing in this application turns on the absence of this request.

iv) ***A demand that the landlord be ordered to provide proper notice to enter the rental unit;***

-No specific grievance was detailed concerning landlord's right of entry. I direct both parties to section 29 of the *Act* for guidance on this matter.

v) ***A request that the landlord be ordered to provide a letter detailing expected standards of cleanliness from the landlord;***

There was no claim before me concerning standards of cleanliness. For guidance, issues concerning cleanliness are the responsibility of both the landlord and tenant.

Section 32(1) of the *Act* explains that the landlord *must provide and maintain residential property in a state of decoration and repair that*

(a) Complies with the health, safety and housing standards required by law, and
(b) Having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 32(2) meanwhile, places a burden on the tenant to *maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

vi) ***A request that the landlord be ordered to remove WP from the rental agreement and name CW as tenant;***

There is no provision in the *Act* on which to base this demand. The landlord is free to remove tenant WP from the rental contract and offer the parties a new tenancy agreement.

vii) ***A demand that the landlord be ordered to recognize CW as a tenant;***

See point (vi) above.

viii) ***A request for an order that all communications between landlord and tenant to be in physical documents or formal documents;***

This does not fall within the scope of the *Act* so I cannot order it.

4. To compel the landlord to amend a tenancy agreement proposed to BB dated November 1, 2016 excluding CW;

5. To address a photograph of a note posted in the shared laundry room by the corporate landlord threatening residents with removal of their property; and

6. To address a cease and desist letter from a law firm representing the corporate landlord addressed to BB.

Items 4 through 6 were raised by BB during the course of the hearing; however, the actions described do not contravene the *Act,* so I cannot order them.

Analysis- Filing Fees

As the 1 Month Notice was issued on insufficient grounds, pursuant to section 72 of the *Act,* I dismiss the landlords' application to recover their filing fee from tenant BB.

Tenant BB and CW were successful in having the 1 Month Notice cancelled. I issue a monetary Order in their favour of $100.00 to cover their filing fee. As this tenancy is continuing, tenant BB and CW may also choose to implement this monetary award by withholding $100.00 from a future monthly rental payment for this tenancy.

Conclusion

I allow the application from Tenant BB and CW to cancel the 1 Month Notice to End Tenancy of October 25, 2016. This 1 Month Notice is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act.*

I dismiss the tenants' application for a monetary order and their application under section 62(3) of the *Act*.

I issue a monetary award in the favour of Tenant BB and CW in the amount of $100.00, which enables them to recover their filing fee from the correctly spelled respondent named in their application. They are provided with these Orders in the above terms and the corporate landlord must be served with this Order as soon as possible. Should the corporate landlord fail to comply with these Orders, they may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. As noted above, Tenant BB and CW may also choose to withhold $100.00 from a future rent payment in order to satisfy this monetary award.

The landlord's application is dismissed without leave to reapply.

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: January 9, 2017

Residential Tenancy Branch