



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mee Hoi Bros Co. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This was a hearing with respect to the tenant's application to cancel a one month Notice to End Tenancy for cause. The hearing was conducted by conference call. The tenant and the landlord's representatives called in and participated in the hearing. The landlord and the tenant exchanged documentary evidence before the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy dated December 28, 2016 be cancelled?

Background and Evidence

The rental unit is an apartment in Vancouver. The tenancy began in October, 2014 for a six month term. The tenancy has continued since then on a month to month basis.

The landlord served the tenant with a one month Notice to End Tenancy for cause dated December 28, 2016. The Notice required the tenant to move out of the rental unit by January 31, 2017. The reasons for the Notice to End Tenancy were that the tenant engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of the landlord and that the tenant has assigned or sublet the rental unit without the landlord's consent.

The landlord's representative testified that the City of Vancouver notified the landlord by letter in November, 2016 that certain units in the rental property were being advertised for nightly or weekly rental accommodation contrary to the City's zoning and development bylaw. The tenant's rental unit was one of the units mentioned in the letter. The landlord sent the tenant a letter dated December 2, 2016 warning him that he was in breach of the bylaw and in breach of his tenancy agreement, which requires the landlord's written consent to assignments or subletting. The tenant was warned that a further breach would result in the termination of his tenancy.

The landlord's representative said that he became aware of an advertisement for an Airbnb rental of the unit by the tenant after the warning letter was sent to him. The

landlord's representative responded to the internet advertisement and received a response from the tenant. After the response from the tenant, the landlord served the tenant with the Notice to End Tenancy for cause.

The landlord's position is that the tenant is in breach of the City bylaw and that breach constitutes illegal activity that puts the landlord's rights in jeopardy because it exposes the landlord to penalties that may be imposed by the City. It is also an unlawful attempt to sublet the property, contrary to the provisions of the tenancy agreement.

The tenant responded to the landlord's internet inquiry on January 3, 2017. He said that he would have to decline the rental request because Airbnb rentals were no longer permitted in his building. The tenant filed his application to dispute the Notice to End Tenancy on January 4, 2017.

The tenant disputed the Notice to End Tenancy. He said he has lived in the unit since October, 2014 and has been a good tenant. His rent has always been paid on time and he has performed significant repairs and improvements. The tenant said that he stopped seeking Airbnb rentals after he received the warning letter from the landlord. He testified that he had to pay a cancellation fee to cancel some pre-booked stays.

The tenant gave his assurance at the hearing that he would never engage in any form of rental or sublet in future and he confirmed that the rental unit is his home and principal residence.

Analysis

The Residential Tenancy Policy Guidelines provide guidance with respect to what constitutes "illegal activities" as a ground for ending a tenancy. The Guideline states in part as follows:

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.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of

damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

The short stay rental of a unit in the rental property may be considered as a breach of the municipal bylaw. The evidence showed that the tenant did advertise the unit for a short stay rental, but it has not been established that, since the warning was issued, he has actually rented the unit, contrary to the bylaw, although there is some evidence that it may have been advertised, but later withdrawn.

The tenant gave his unequivocal promise at the hearing that he would never again offer the unit for a sublet or short stay rental contrary to the City bylaw. Based on the tenant's assurance and with the knowledge that any future infraction would result in grounds for the issuance of a new Notice to End Tenancy for cause and the tenant's eviction, the landlord's representative accepted that the Notice to End Tenancy should be cancelled based on the tenant's acknowledgement and acceptance that a future offence will result in immediate eviction.

Conclusion

I find that the Notice to End Tenancy should be cancelled based on the evidence that the unit has not been rented contrary to the bylaw since the warning was given and based on the tenant's solemn assurance to comply with the bylaw in future. The Notice to End Tenancy is cancelled and the tenancy will continue until ended in accordance with the *Residential Tenancy Act*. I decline to award the tenant the recovery of the filing fee for his application.

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: February 16, 2017

Residential Tenancy Branch