



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DISTRICT OF SUMMERLAND
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC, OLC, OPT, AAT, FF

Introduction

This hearing was scheduled to consider the tenants' application pursuant to the Residential Tenancy Act for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the "1 Month Notice");
- an order requiring the landlords comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70;
- an Order of Possession of the rental unit pursuant to section 54; and
- authorization to recover the filing fee for this application from the landlords 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. The tenant KW primarily spoke for both co-tenants (the "tenant"). The personal landlord confirmed he represented both himself and the corporate landlord (the "landlord").

As both parties were in attendance I confirmed that there were no issues with service of the landlords' 1 Month Notice, the tenants' application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlords' 1 Month Notice, the tenants' application and their respective evidence.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not are the landlords entitled to an Order of Possession?

Should conditions be set on the landlords' right to enter the rental unit?

Should the landlords be ordered to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to a return of the filing fee from the landlords?

Background and Evidence

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

The parties agreed on the following facts. This tenancy began in the autumn of 2010. The current monthly rent is \$850.00 payable on the first of each month. There is no written tenancy agreement between the parties. A security deposit was not paid by the tenants at the start of the tenancy.

The tenant testified that in September, 2016 they sublet the rental unit. The tenant testified that because there is no written tenancy agreement they believed that there was no requirement to inform the landlords or seek their consent for the sublet.

The landlord testified that the sublet was discovered in late December, 2016. The landlord confirmed that they had not consented to the sublet and informed the tenants that they would be ending the tenancy for cause.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlords bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlords must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlords must demonstrate that the tenants have assigned or sublet the rental unit without the landlord's written consent. The tenant testified that they did not believe consent, whether written or oral was required in order to sublet the rental unit as there was no written tenancy agreement. The tenant testified that the sublet provides accommodations to a family that had been displaced in a fire and is being done altruistically.

Based on the undisputed evidence of the parties I find that the tenants have sublet the rental unit without the written consent of the landlords. I find no merit in the tenants' position that written consent is not required as there is no written tenancy agreement. The tenants acknowledge that this is a tenancy. As such the provisions of the *Act*, specifically section 34(1) requiring that the tenant not sublet a rental unit without the written consent of the landlord, applies. Accordingly, I find that this tenancy ends on the corrected effective date of the 1 Month Notice, March 31, 2017.

Section 55(1) of the *Act* reads as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlords' 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice provides the reasons for ending the tenancy, that the tenants sublet the rental unit without the written consent of the landlords.

As I have dismissed the tenants' application to dispute the 1 Month Notice, I find that the landlords are entitled to an Order of Possession pursuant to section 55 of the *Act*.

Conclusion

I grant an Order of Possession to the landlords effective **on 1:00PM of March 31, 2017**, the corrected date of the 1 Month Notice. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenants' 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: March 14, 2017

Residential Tenancy Branch