Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB, FF
CNC, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. The landlords have applied for an Order of Possession for cause and for breach of an agreement, and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for an order cancelling a notice to end the tenancy for cause; for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; and to recover the filing fee from the landlords.

The hearing did not conclude on the first scheduled date and was adjourned for continuation from time-to-time for a total of 3 scheduled hearing dates. Both landlords and both tenants attended the hearing and the landlords were accompanied by Legal Counsel.

The parties each gave affirmed testimony, and the landlords called 3 witnesses and the tenants called 2 witnesses, who also gave affirmed testimony. The parties, or their counsel, were given the opportunity to question each other and the witnesses and to give closing submissions.

During the course of the hearing, I determined that the tenants' application for a monetary order was not sufficiently related to the primary issue, being the notice to end the tenancy, and I dismissed the tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement with leave to reapply.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Have the landlords established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Should the One Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The first landlord (TK) testified that this fixed term tenancy began on July 15, 2016 and expires on July 15, 2017 thereafter reverting to a month-to-month tenancy and the tenants still reside in the rental unit. Rent in the amount of $2,000.00 per month is payable on the 5th day of each month and there are no rental arrears. The rental unit is a single family dwelling with an in-law suite, and a copy of the tenancy agreement has been provided.

The landlord further testified that on February 16, 2017 the landlord personally served the tenants with a One Month Notice to End Tenancy for Cause, a copy of which has been provided for this hearing. It is dated February 16, 2017 and contains an effective date of vacancy of April 5, 2017. The reasons for issuing it state:

- Tenant has allowed an unreasonable number of occupants in the unit/site;
- Tenant or a person permitted on the property by the tenant has;
    - significantly interfered with or unreasonably disturbed another occupant or the landlord;
    - seriously jeopardize the health or safety or lawful right of another occupant or the landlord;
    - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
    - Jeopardize a lawful right or interest of another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park;
- Rental unit/site must be vacated to comply with a government order;
- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord further testified that the rental home was listed for sale. The tenants expressed an interest in purchasing it and a tenancy agreement was signed by the parties. The tenants did not purchase the home, and now it is listed for sale again.

The tenancy agreement includes an Addendum specifying that no dogs are permitted on the grassy area of the east side of the house. The landlords had just spent a lot of money re-sodding the yard and wanted the tenants' dog to stay off of it until it matures to ensure the grass will grow. It's a fairly big yard and a well-trafficked road, and if the tenants had not agreed to that term, the landlords would not have entered into the tenancy agreement with the tenants. The landlord has inspected the rental property and found that there had been a lot of traffic on the snow in that area, and the dog had also been there. The landlord has not inspected since the snow disappeared.

The rental home was advertised for rent as a single family dwelling, but there is an in-law suite that is independent of the upper level. The in-law suite has a kitchen, but the stove was disconnected.

In September, 2016 the landlord received a call from a by-law officer who advised of complaints from neighbours about debris and appliances left in the yard. The by-law officer inspected the rental property and wrote a letter to the landlords stating that the landlords had to take care of the yard. The by-law officer asked one of the tenants about a second family living in the in-law suite and the tenant advised they were family. The landlords were not aware of a second family until talking to the by-law officer. The tenants had asked the landlord's wife about sub-letting, but the landlords repeatedly said that they couldn't sub-let; it was against the by-law and not set up for a rental. The tenants were also denied a request to put up a wall and no written permission was ever given to sub-let. The landlord is a contractor and aware that it would be a contradiction of the existing code.

The stove in the in-law suite had been disconnected and the tenants re-installed it and were using it when realtors were there. The landlords told the tenants then that it was a violation of by-laws, and the tenants said they all used facilities upstairs, and were related to one another and co-exist in the single family dwelling. Recently the by-law officer inspected and told the landlords they have 2 weeks to remove the stove.

The landlords have also provided a copy of an email from the landlord's insurance broker dated November 18, 2016 addressed to the landlord's wife saying that the landlords' insurance policy was in violation and that due to over-occupancy the premiums will increase. The landlord's wife asked the tenants to take out their own insurance.

The second landlord (SMK) testified that the tenant's step-mom and dad had also arrived, and the landlord told the tenants that nothing could be done until approved, but they moved in. The landlord didn't know about a sub -let and thought the parents were staying there while looking for another home.

The landlord first learned of another occupancy after receiving communication from the by-law officer in September, 2016, and the landlord spoke to the tenants about it explaining that the in-law suite is not meant to be a separate rental, and that the tenants needed their own insurance or the landlords' insurance would be in jeopardy. The tenants were told of that several times after move-in and it is a stipulation of the landlords' insurance policy. The tenants have not insured, and the landlords' insurance broker said the home is only insurable for a single family and would have to be re-assessed for more, and prove the house was not altered. There are 9 people living in the rental home.

The parties attended a hearing under the *Residential Tenancy Act* in January, 2017 wherein the tenants disputed a 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenants did not give the landlords a chance to investigate what needed to be done to allow sub-tenants, the landlords did not give permission, and the tenants went ahead and moved other people in. The in-law suite had a gas stove in it which was removed to obtain occupancy. An electric stove was placed there for esthetic purposes for selling only, and there was no fridge until the tenants bought one. The landlords did not want a multi-family rental home. At some point, the

landlord was going to block off an area in order to have someone else move in, but that was in July when the landlord found out that it couldn't happen.

As a result of the difficulties, the landlord has suffered health concerns, including depression. The landlord lost her job, is in debt over insurance, and the landlords have 2 weeks to comply with the by-law and insurance orders.

The landlords' first witness (SP) testified that she was the listing real estate agent at the beginning of this tenancy and is again the listing real estate agent, and has visited the rental property numerous times. The first listing started in March, 2016 and stopped in July when the tenants moved in. It has now been listed since October, 2016. It is advertised as a 3-bedroom, 4-bathroom home. The landlords had decided to rent despite advice from the realtor to not rent it at all.

One showing was on February 10, 2017 to a prospective purchaser who had given an offer to purchase. The tenants were cooperative with the showing. The witness entered through the main door with the buyer and the buyer's agent, and upon entering the former in-law suite the witness introduced the buyer to a woman there. The buyer had a conversation with the woman who said that she doesn't rent the home but rents a room for $850.00 per month including the bills and shares the kitchen. She was very evasive and seemed quite nervous. The area had a stove and a fridge and was self-contained.

The witness further testified that there is shared plumbing between the home and the in-law suite, which is not illegal but occupants must be family members. The main panel for the home is in the laundry room which is in the in-law suite area, and a subpanel is in the other section of the home.

The tenants have been accommodating with respect to showings, however feedback from prospective purchasers is that it doesn't show well and is not in a very good state. It might be chaos or cooking smells, and may be challenging but not impossible to sell. There are 4 or 5 different types of flooring in the rental home, and some trim needs to be finished. The witness had a buyer interested in the fall but unfortunately that didn't work out.

The witness also testified that the landlords had spent a lot of money on a new lawn just before the tenants moved in, or near the end of May, 2016. They also cleared the walkway, added wood chips and road ties to dress up the front, and the rest of the property is gravel parking and perhaps some pavement. There is only a fenced area where the new sod is and the rest is all open.

The landlords' second witness (PG) testified that he is a licenced insurance broker and was in communication with the landlord in November, 2016. The landlord forwarded a letter to the witness that the landlords had received from a by-law officer.

Prior to November, 2016 the home was insured and the landlords were renting the upper level and the landlord used a suite in the basement, which is owner occupied. The witness

understood that the landlord was only in town a few days per month, but the witness is not sure when the landlord advised that she was renting out the entire home.

The witness told the landlord that the insurance company would charge the landlords about $180.00 for a 2- family surcharge and had certain conditions. First and most importantly, both families must have tenants' insurance for the tenants' contents and personal liability; if there is more than one tenancy in the home, and both tenant families must have an insurance package or the insurance company will not insure the property. The tenants said there was no way they were going to do that. The insurance company required proof of tenants' insurance or they would give 15 days notice for the landlords to find another company to insure them. To do that, the witness would have to go to Special Risk Market and the premium would be approximately triple. If the landlords were not able to get coverage in time, the mortgage holder would insist on the mortgage being paid in full or put insurance on the home at an even higher rate. The current insurer has the most reasonable price which is why this home is insured with them, but will not cover the tenants' package so the tenants need to get their own insurance and provide proof to the landlord.

The witness also visited the rental home and testified that the stove in the lower level is not an approved appliance based on by-laws and the building code so would have to be removed or the home renovated.

The landlords' third witness (JH) was called out of order due to availability issues. He testified that he is a building inspector working for the District, and his duties include reviewing building permit applications, performing on-site inspections, enforcing the building code and by-law, and some of the zoning by-law, but is not a by-law officer. He was in touch with one of the landlords probably a month or more ago for the first time.

The by-law governs the kitchens allowed in a home; the building code is silent on that. The zoning by-law defines a single family dwelling as having 1 kitchen, or a secondary suite which is a second dwelling within a single family dwelling with rules that would allow the second kitchen as long as the zoning by-law is met. It is a breach of the zoning by-law for a non-registered secondary suite, and if it comes to the attention of the District, a site visit occurs to verify it, and if verified, the District gets back to the owner with options to register or decommission the secondary suite by following the rules, including the *Residential Tenancy Act*. If there are life-threatening issues, the owners are given a month to evict the tenants, and if no life-threatening issues, 2 months are allowed if the landlord doesn't want to register it. Usually, tenants don't want to have the secondary kitchen decommissioned, but as long as all cooking is done in the same kitchen, it's not a problem so long as the building code is not breached. The second family, if not blood related to the tenants, can be considered boarders and can be a maximum of 3 people. If a second kitchen is used, tenants would be evicted.

To decommission the second kitchen, the stove would have to be removed and breakers, as well as covering the plug-in. There is a bit of a grey area, in that a daycare with a stove, for example, is obviously not a suite. A landlord should decommission a secondary kitchen prior to

renting, but as long as there is not a second family using that kitchen separately, which applies to any kind of cooking facility, the only requirement is to comply with the building code. If it looks like a suite, the District asks that it be removed. Also, the building code and zoning by-laws have rules about separating a home into 2 units, which would cost thousands of dollars to register it. However, there won't be a suite if the stove is decommissioned, and the secondary family would be considered boarders so long as the power is safely removed.

The first tenant (EF) testified that nothing has changed and the same people are living in the rental unit that had been since the beginning of the tenancy. The parties entered into a lease and the tenants were not told anything about having tenants' insurance and the tenants weren't aware they were required to do so. It's not the responsibility of the tenants to ensure the landlords have proper insurance, or that if the tenants had their own coverage, the landlords would pay a lower premium. The landlord simply asked if the tenants had such insurance and they replied that they did not; it was not in the lease and the tenants never did have insurance.

The tenant further testified that the landlords replaced the sod during May, 2016 and it takes 3 to 6 weeks to root, which would have been established before the tenants even moved in. The landlords knew the tenants had a dog and saw the dog on the lawn.

The rental home has 3 bedrooms on the main level, a recreation room in the basement and the in-law suite. The tenants' son uses the recreation room as his sleeping area.

The issues mentioned by the by-law officer were issues that the tenants took care of. There was construction debris in the yard and the landlord said she wanted some of it, so the tenants left it for the landlords to decide what to do with it.

The landlord called the by-law officer and an inspector who put an order in place for the landlords to remove the stove or renovate. There is no fridge, but there is a stove in the in-law suite. Two other tenants and their infant daughter reside there and the landlord was well aware of it at the beginning of the tenancy. The tenant collects $850.00 per month from them to pay bills.

The tenant further testified that the landlord was not honest with the insurance company and asked the tenants to call her "Auntie" and said if there are any problems to tell people that the tenant is the landlord's nephew. This issue should have been dealt with in July, prior to the commencement of the tenancy, not in November, 2016.

The second tenant (EMN) testified that the tenants first saw the rental home on July 2 and the tenancy actually began on July 15, 2016. The tenants moved in on July 17 and the tenancy agreement was signed the next day. The persons living in the in-law suite met with the landlord on July 18 and the landlord showed them the basement. The stove was plugged in and the landlord said she was taking the fridge out and the tenants would have to get another, so they did. The tenants unplugged the stove after receiving a request from the landlord to do so.

The landlord also advised the tenant that she wanted to list the house in the spring, but on October 17, 2016 the landlord informed the tenants that she was listing the home for sale and the tenants had only been there for 4 months at that time. There have been multiple lookers, sometimes more than once in a day, and the tenant keeps the home tidy.

On November 18, 2016 the landlord had set up a meeting for 5:00 p.m. but showed up at 8:30 a.m. The landlord did some yard work at her own insistence; the tenant did what she could but didn't get to the leaves fast enough for the landlord.

The landlord knew the dog had been outside on the new sod area and told the tenant several times not to worry about it. The landlord said she would talk to her husband about it and the tenant believed her. The dog doesn't dig, there are no holes in the yard, and the tenants clean up after the dog.

The tenants now have tenant's insurance (which was arranged during the course of this 3-day hearing). When the landlord asked the tenants to get insurance, she never said why. Now that the tenants understand the issue, they have obtained it.

The other tenants are moving out at the end of April. They are not blood related, but family. The landlords knew about them moving in before the tenancy agreement was signed and encouraged it. They met the landlord several times prior to moving in and the tenants didn't hide anything from the landlords. They moved in July 29 and 31, arriving 2 days apart. The tenant helped the landlord move the landlords' belongings out of the in-law suite and the parties talked about it, which is why they rushed to get the items moved out.

The tenant denies ever telling the landlords that the tenants would purchase the home, but told the landlords it was not suited to the tenants' family and the landlord kept pushing the tenants to buy the house.

The landlord never brought up anything to do with tenants' insurance prior to signing the tenancy agreement.

The tenants' first witness (KW) testified that she and her spouse moved into the rental unit on July 29, 2016. The witness had had multiple conversations with the tenants that since they were both looking for a rental at the same time, they could share a house if possible.

They viewed the rental unit on the 18th of July with the tenants, the tenant's father and step-mother, and one of the landlords. The landlord encouraged moving in and gave the witness a tour. The landlord said something to the effect of, "Oh, you're the ones that will be renting the basement suite," and the witness felt the landlord was talking her into it. The witness told the landlord that they were paying $850.00 per month to the tenants, and the landlord said that's what she would have charged. .The rental unit was not up to the witness' standards, but with encouragement from everyone, the witness and her spouse decided to move in.

The witness had lots of contact with the landlord after that. They were friendly, smoked outside in the yard together while the dog was out there. The landlord was very nice at first and definitely knew the witness lived there.

An inspector and by-law officer attended saying they were sent by the landlord. The tenants and witness had not received any notice, but the witness cooperated and let them in. Then the witness was told that she couldn't use the stove, so uses a crock pot or hot plate or the stove and/or oven in the upper level of the home. The tenants and witness and their families share the home, having a private bedroom.

The tenants' second witness (BB) testified that he viewed the rental home prior to this tenancy, talked to the landlord about moving in as well, and the landlord said that was fine. The plan was to move in together, but the witness had to fulfill obligations at their previous residence, so arrived about a week after the tenants. The landlord was fully aware that the witness and tenants were all moving in before the lease was signed. The entire home is shared as a family.

Closing Submissions of the Landlords' Legal Counsel:

The *Residential Tenancy Act* is clear that the landlord must give written permission, not verbal permission to sublet. There is no written consent, but the landlords don't deny they said they would look into the possibility of that. However that cannot be construed as consent. The landlords did look into it with the insurance broker but while in the investigative process, the landlords were informed of problems that would create for insurance and by-law purposes, so they denied the request to sub-lease. Counsel also submits that the landlords had little knowledge of what was going on and the tenants proceeded with a sub-tenancy anyway. In order to make a finding of waiver there would have to be very convincing evidence to support that, and the general rule is written consent.

The increase in occupancy has caused the landlords to suffer consequences. The tenants now say they are decommissioning the lower suite and have now obtained tenant's insurance, after multiple requests by the landlords. It is not relevant whether or not today there is a continual breach, but at the time the notice to end the tenancy was issued. Further, the insurance broker testified that if 1 family was residing in the rental unit, tenant's insurance wasn't required, but if more than 1 family, both were required to have it, and the landlord was required to prove that or risk invalidating their insurance.

Also, the tenancy agreement contains an Addendum that prohibits animals from being on the newly sodded area of the yard, which was very important to the landlords in order to preserve it, and that has not been respected by the tenants.

Closing Submissions of the Tenants:

One of the landlords testified that the dog was not permitted on that part of the yard until the grass was established, and the tenants complied. The landlord then gave verbal permission

over and over again when they visited the rental unit to not worry about it, it's okay, but would never put it in writing.

The tenants and the second family would have rented with or without the second kitchen; it was not a necessity. However, the way it was presented by the landlord everything was approved by her and the first time the landlord had contact with the insurance broker was in November, 2016. The landlords ought to have looked into that before the tenancy agreement was signed, and failing to do so, the landlords have put themselves in jeopardy. Both families moved in as a group and did not misrepresent themselves and went through a screening process. Further, there are only 3 people occupying the lower level, including their one child.

The *Residential Tenancy Act* states that a landlord cannot unreasonably withhold a sublet longer than 6 months.

Analysis

I have reviewed the One Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Act.* The reasons for issuing it are in dispute:

- Tenant has allowed an unreasonable number of occupants in the unit/site;
- Tenant or a person permitted on the property by the tenant has;
    - significantly interfered with or unreasonably disturbed another occupant or the landlord;
    - seriously jeopardize the health or safety or lawful right of another occupant or the landlord;
    - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
    - Jeopardize a lawful right or interest of another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park;
- Rental unit/site must be vacated to comply with a government order;
- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

I have also reviewed all of the evidence provided by the parties.

The tenancy began in July, 2016 and the notice to end the tenancy is dated February 16, 2017.

The landlords were notified by the insurance broker in November, 2016 that by changing the occupancy from owner occupied to a single family rental, the increase in premiums would be approximately $240.00 per year, and if the tenants are subletting, the premiums would increase

by approximately another $400.00 and that proof of tenants' insurance was required for more than one rental or family. The landlords moved out and rented the home, and therefore the $240.00 increase is not an issue of the tenants. The landlords received another email from the insurance broker in February, 2017 explaining that if there are 2 families renting, each must have their own insurance, giving the landlords 30 days to ensure that tenants have complied.

There is no question in my mind that the landlords, or at least one of them, knew full well before the tenancy began that the intent was for the second family to move in. I do not accept the testimony of the landlord that it was a surprise to her, but prefer the tenants' testimony and that of the witnesses that the landlord was well aware of the multi-family rental from the beginning. I found their testimony to be honest and consistent, and consistent with the evidentiary material, particularly that of the tenant's parents that not only was it well known, but encouraged by the landlord. It wasn't until the landlords discovered how much difficulty there could be for failing to comply with the by-law and then the requirements of the insurance company, that they issued the notice to end the tenancy. It is not sufficient to allow occupancy and then end the tenancy as a result of that occupancy. I find that the landlords have issued the notice to end the tenancy to avoid extra insurance premiums, avoid registering the second suite, and for sale purposes.

The landlords received a complaint in writing from the District office on February 10, 2017 about the unsightly yard and the landlord showed up early to clean it. However, the tenant testified that some of the items belonged to the landlords, the landlord asked that some of the materials be saved for the landlords, and the landlords didn't dispute that. I am not satisfied that the landlords have established that the tenants caused any disturbances, jeopardized the health or safety of anyone, or put the landlords' property at significant risk.

I further find that the landlords have failed to establish any illegal activity.

Counsel for the landlords submits that keeping the tenant's dog off the newly sodded area of the yard was a material term of the tenancy, and I agree that it is contained in the Addendum. However, there is no evidence of written notice to comply and therefore I cannot make a finding that the tenants have breached a material term of the tenancy agreement within a reasonable time after written notice to do so.

There is no evidence before me that the tenants gave any false or misleading information to a prospective tenant or purchaser, or of any government order.

In the circumstances, I am not satisfied that the landlords have established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act,* and I cancel it. The landlords' applications for an Order of Possession and for recovery of the filing fee are hereby dismissed.

Since the tenants have been partially successful with the application, the tenants are entitled to recovery of the $100.00 filing fee, and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement is hereby dismissed with leave to reapply.

The landlords' application is hereby dismissed in its entirety.

The One Month Notice to End Tenancy for Cause dated February 16, 2017 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $100.00 as recovery of the filing fee, and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

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: April 13, 2017

Residential Tenancy Branch