



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, AS, FF

Introduction

This hearing was convened by way of conference call in response to the Tenants' Application for Dispute Resolution (the "Application") requesting: to cancel a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"); for more time to cancel the 1 Month Notice; to allow the Tenants to sublet the rental unit because the Landlord's permission has been unreasonably withheld; and to recover the filing fee from the Landlord.

An agent for the Landlord (the "Landlord") and both Tenants appeared for the hearing. However, only the male Tenant and the Landlord provided affirmed testimony during the hearing. The hearing process was explained to the parties and they had no questions about the proceedings.

The Landlord confirmed receipt of the Tenants' Application by registered mail. The Tenant confirmed receipt of the Landlord's 13 pages of evidence and that the only documentary evidence the Tenants had provided prior to this hearing was a copy of the 1 Month Notice.

Preliminary Issues

The Tenants had applied for more time to cancel the 1 Month Notice. Therefore, I dealt with this matter as a preliminary issue. During the hearing, the Landlord confirmed personal service of the 1 Month Notice to the Tenants on March 14, 2017. The Tenant confirmed receipt of the 1 Month Notice on the same day and applied to dispute it on March 23, 2017.

Therefore, I find that the Tenants disputed the 1 Month Notice within the 10 day time limit provided for by Section 47(4) of the *Residential Tenancy Act* (the "Act").

Issues(s) to be Decided

- Should the one 1 Month Notice to end tenancy be cancelled?

- Should the Tenants be allowed to assign or sublet the rental unit?

Background and Evidence

The parties agreed that this tenancy started between the previous landlord and the Tenants in November 2012. The Landlord took over the tenancy in April 2015 at which point the Landlord and Tenants signed a tenancy agreement with a start date of April 1, 2015 on a month to month basis.

Rent under the written tenancy agreement is payable by the Tenants in the amount of \$1,000.00 on the first day of each month. No security deposit was paid for this tenancy.

The 1 Month Notice dated March 13, 2017 was provided into evidence and shows a vacancy date of April 15, 2017. The Landlord elected the following reasons for ending the tenancy which he detailed on page two of the 1 Month Notice:

- Tenant is repeatedly late paying rent; and
- Tenant has assigned or sublet the rental unit without the Landlord's written consent.

As a result, I asked the Landlord to present evidence on the reasons for the 1 Month Notice. With respect to the reason that the Tenant has been repeatedly late paying rent, the Landlord testified that the Tenant has been habitually late paying rent in this tenancy.

The Landlord testified that specifically, the Tenant has paid rent late for the following months April, June, September, October 2016 and February and March 2017. The Landlord provided e-transfer evidence for these late payments.

The Tenant confirmed that he had paid rent late prior to April 2016 and also confirmed that he had paid rent late for the months that the Landlord testified to. The Tenant stated that he had done a number of repairs to the rental unit during the tenancy and that he had a verbal agreement with the Landlord that in exchange he was allowed to pay his rent late. The Tenant stated that the female Tenant could also verify this in oral testimony.

The Landlord testified that the Tenants were never given any verbal or written consent to complete repairs to the rental unit and were not authorised to do so due to liability

and safety issues. The Landlord confirmed that at no time were the Tenants given permission to pay their rent late either in writing or verbally.

The Tenant submitted the Landlord's failure to address the late payment with him verbally or through a notice to end tenancy for unpaid rent gave him the understanding that late payment of rent was acceptable in this tenancy. The Tenant confirmed that the repairs he did to the rental property was not in lieu of rent but in exchange for paying rent late and that this was a give and take understanding between the parties gave leniency for late payment of rent.

The Tenant submitted that his oral testimony which could be back up by the female Tenant's oral testimony should be sufficient evidence of the verbal agreement he had with the Landlord. In addition, the Tenant referred to text messages he had with the Landlord for the late payment for September and October 2016, which were not provided into evidence for this hearing. The Tenant stated that this was evidence that the Landlord had agreed to the late payment of rent.

The Landlord replied stating that the parties did have a text message conversation but that conversation made no mention of any permission for the Tenants to pay rent late.

In relation to the second reason on the 1 Month Notice, the Tenant stated that they were not living in the rental unit because they had sublet it to renters. The Tenant confirmed that they still retained control of the tenancy. The Landlord testified that the Tenants did not obtain his consent to sublet the rental unit verbally or in writing and that his tenancy is with the Tenants and not with the renters.

Analysis

I have examined the 1 Month Notice and I find that it was completed with the correct information on the approved form as required by Sections 47(3) and 52 of the Act. I accept the 1 Month Notice was served to the Tenants personally on March 14, 2017 pursuant to Section 88(a) of the Act.

However, the vacancy date on the 1 Month Notice does not comply with Section 47(2) of the Act because it does not allow for one clear rental month before it becomes effective. Therefore, pursuant to Section 53 of the Act I have corrected the vacancy date on the 1 Month Notice to April 30, 2017.

When a landlord serves a tenant with a 1 Month Notice and the tenant disputes it, the burden of proof is on the landlord to prove one of the reasons the landlord relies on to

end the tenancy. If the landlord proves the 1 Month Notice, it must be upheld and the tenancy must end.

In relation to the Tenant's request to cancel the 1 Month Notice, I first turn my mind to the parties' evidence in relation to the allegation that the Tenants repeatedly paid rent late in this tenancy. Section 26 of the Act requires a tenant to pay rent on the day that it is due whether or not a landlord complies with the Act. In addition, Policy Guideline 38 titled "Repeatedly Late Payment of Rent" states:

"The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late.

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision."

[Reproduced as written]

In this case, I find the Landlord and Tenants signed a tenancy agreement which made it clear that the Tenants had an obligation to pay rent on the first day of each month. The Tenant did not dispute that prior to April 2016 they had paid rent late in this tenancy. In addition, the Tenant agreed that they had made several late payments of rent in 2016 and the practice of paying rent late continued in 2017 with the Tenants paying rent late for the two months prior to being served with the 1 Month Notice.

I do not accept the Tenants' oral evidence that they had a verbal agreement with the Landlord to pay rent late for each of those months it was paid late. The Tenants provided insufficient evidence in this respect and I find their oral evidence results in one party's word against the other. In addition, the Tenants failed to provide any supporting or corroborating evidence that they undertook alleged repairs at the request, or with the consent, of the Landlord and that these repairs were completed in exchange for leniency for paying rent late. In this respect, I find the Tenants would have been

responsible for obtaining the alleged consent in writing as this involved a material term of the tenancy agreement regarding payment of rent.

I find the late payments that were made in this tenancy are not significantly far apart enough for the Tenants to escape their obligation to pay rent on time. I find the Tenants signed a tenancy agreement which informed them that pursuant to that agreement and to their obligations under Section 26(1) of the Act, they were required to pay rent on time in this tenancy. The Act does not require a landlord to serve a notice to end tenancy for unpaid rent or a breach letter before a landlord is able to rely on this remedy to end the tenancy.

I find that after the Tenant paid rent late for February and March 2017, the Landlord acted in a timely fashion to serve the 1 Month Notice on March 14, 2017. Therefore, I find that a significant time period had not lapsed before the Landlord's reliance on this remedy may have been extinguished. As a result, I find the Landlord has proved this reason on the 1 Month Notice.

In relation to the 1 Month Notice for subletting the rental unit without the Landlord's written consent, Section 34(1) of the Act states that **unless a landlord consents in writing**, a tenant must not sublet a rental unit. The Act makes it very clear that the obligation to obtain a landlord's consent to sublet rests with a tenant.

There was insufficient evidence before me that the Tenants obtained the Landlord's consent in writing before subletting the rental unit. In this case, the Tenants were required to obtain the Landlord's written consent to do so and if it was unreasonably withheld, then the Tenants' recourse was to file an Application requesting authority to do so from an arbitrator because the consent was being unreasonably withheld. There is insufficient evidence before me that the Tenants followed this course of action. As a result, I find the Tenants' subletting of the rental unit was premature and contrary to the Act. Based on the foregoing analysis, I dismiss the Tenants' request to cancel the 1 Month Notice.

Section 55(1) of the Act states that if a tenant makes an Application to dispute a notice to end tenancy the Arbitrator **must** grant an Order of Possession if it complies with the Act and the tenant's application is dismissed. As I have made a finding that the 1 Month Notice complies with Section 52 of the Act and the Tenants' Application to cancel it is dismissed, the Landlord must be granted an Order of Possession.

This order is to be effective on the corrected vacancy date of the 1 Month Notice, namely April 30, 2017 at 1:00 p.m. The Landlord must serve the order to the Tenant and

may then enforce the order through the Supreme Court of British Columbia if the Tenants fail to provide vacant possession of the rental unit to the Landlord.

The Tenants may also be held liable for the losses incurred by the Landlord for enforcing the order. Copies of the order are attached to the Landlord's copy of this Decision.

As the tenancy is due to end shortly, the Tenants' request to sublet the rental unit is now a moot issue and is hereby dismissed. As the Tenants have not been successful in their Application, I also deny their recovery of the filing fee from the Landlord.

Conclusion

I find the Tenants have been repeatedly late paying rent and have sublet the rental unit without the Landlord's written consent. The Tenant's Application is dismissed in its entirety without leave to re-apply. The Landlord is issued with an Order of Possession effective at the end of April 2017.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 27, 2017

Residential Tenancy Branch