



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PENINSULA ESTATES HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was scheduled to consider the tenant's application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47 of the *Residential Tenancy Act* (the "*Act*").

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 corporate landlord was represented by its agent, MC (the "landlord").

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

Issue(s) to be Decided

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

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in May, 2015. The tenant is the only individual listed as an occupant on the original tenancy agreement. The tenancy agreement contains a clause which states:

17 Occupants and Guests

(d) The landlord has selected the tenant partly based on the basis of the number of residents in the tenant's household. The tenant agrees that only the persons named at the beginning of this tenancy agreement have the right to live as residents in the rental unit during the term of the tenancy, unless the landlord otherwise consents in writing. The tenant agrees to notify the landlord promptly of any change in the residents of the rental unit. The number of residents is a material term of this tenancy agreement, and the landlord may end the tenancy if:

- i. The tenant fails to report a change in the number of residents in the rental unit;
- ii. The number of residents in the rental unit is unreasonable;
or
- iii. The number of family make-up of the residents violates the landlords Operating Agreement with the federal or Provincial Government.

The tenant testified that his adult son has been residing in the rental unit with him for several months. The tenant said that this was reported to the previous property manager who assisted him in completing revised paperwork to reflect the change in the number of occupants. The tenant said that he does not have a copy of the revised tenancy agreement but believes that one was kept by the previous property manager. He believes that the paperwork is in order as both he and his son have been receiving their monthly social assistance funds in the appropriate amounts.

The landlord testified that there are no records of a revised tenancy agreement or the tenant informing the landlord of the additional occupant. The landlord said that a tenant reporting a change in their tenancy circumstance, would be recorded in a written report. The landlord said that there are no reports, handwritten notes or other records that the tenant ever contacted the landlord. The landlord said that there is no record of the tenant contacting the landlord when the additional occupant first moved in.

The landlord issued a letter to the tenant dated April 4, 2017, when the landlord learned of the additional occupant. A copy of the letter was submitted into written evidence. In the letter the landlord identifies the addition of a resident in the rental unit without the landlord's knowledge or approval as a breach of a material term of the tenancy agreement. The landlord gave a deadline of April 30, 2017 by which time the tenant was required to remedy the situation. The landlord stated that if the problem was not fixed by the deadline, the landlord would take action to terminate the tenancy.

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 landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord 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 landlord must demonstrate that the tenant breached a material term of the tenancy agreement. Residential Tenancy Policy Guideline 8 defines a material term as term of an agreement that is so important that the most trivial breach of that term gives the other party the right to end the agreement. Whether a term in an agreement is material is determined by the facts and circumstances of the tenancy agreement.

I find that a limit on the number of occupants in a rental unit to be a material term of the tenancy agreement. I accept the landlord's evidence that a restriction on the number of residents is necessary to ensure continued qualification for rental subsidies. I accept the landlord's evidence that the landlord informed the tenant in writing by the letter of April 4, 2017 that there is a problem which is a breach of a material term. The tenant was given a deadline by which time the problem must be fixed and the landlord informed the tenant of the consequences of failing to fix the problem.

I do not find the tenant's position that the additional occupant was reported to a previous building manager to be credible. The tenant did not provide any written evidence in support of the existence of an amended tenancy agreement nor could he provide the date that such a revised tenancy agreement was drafted. The tenant's recollection was vague and relied primarily upon his testimony that he and his adult son were receiving their expected social assistance funds, as evidence that the additional occupant was approved by the landlords.

Accordingly, I find that the landlord has shown on a balance that there is cause to end this tenancy and dismiss the tenants' application.

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 landlord's 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, the breach of the material term of the agreement.

As I have dismissed the tenant's application to dispute the 1 Month Notice, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act* effective, June 30, 2017 the effective date of the 1 Month Notice.

Conclusion

I grant an Order of Possession to the landlord effective **June 30, 2017**. 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: June 15, 2017

Residential Tenancy Branch