



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FF

Introduction

The tenant applies to cancel a one month Notice to End Tenancy served September 14, 2017. The Notice alleges that: a) the tenant has allowed an unreasonable number of occupants in the rental unit, and/or b) that she has assigned or sublet the rental unit without the landlord's consent. Either of those grounds is cause to end a tenancy under s. 47 of the *Residential Tenancy Act*.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing establish on a balance of probabilities either ground given in the Notice?

Background and Evidence

The rental unit is a one bedroom condominium apartment. The tenant moved in August 1, 2015. The current tenancy agreement commenced August 1, 2017 for a two year fixed term to July 31, 2019. The monthly rent is \$1650.00, due on the first of each month, in advance. The landlords hold a \$775.00 security deposit.

The landlords think the tenant is conducting an "AirBnB" service at the rental unit.

The building manager Mr. M.V. testifies that in July he met a woman from the U.S. who was staying in the apartment for a month. He says in mid August 2017 he encountered a couple entering the building with luggage who informed him they were staying for a week in the rental unit. He reported the occurrences to the strata council.

Mr. M.V. also reports that at least two other occupants on the same floor have reported seeing different people going in and out of the rental unit.

Mr. M.V. contacted the tenant about this use of her apartment and she told him that the woman from the U.S. and the couple with the luggage were friends she had permitted to use her apartment while she was away.

The landlord's representative Ms. S.A. adduced an email from a resident on the tenant's floor indicating that it was obvious that the tenant was conducting an AirBnB operation since there were numerous different people at the apartment and the tenant had been observed taking out trash bins after the occupants left.

On August 23, 2017 the strata council sent the tenant a letter indicating it had received a complaint that she was renting out the unit as a short-term rental and that such use is in violation of the strata bylaw. The letter gave the tenant 21 days to respond..

The tenant says she did not see the letter until receiving it in the landlord's hearing package and so did not challenge its contents.

The strata has postponed any determination of the matter, awaiting this decision.

The landlord Mr. D.J. testifies that he had conducted an internet search of AirBnB and similar sites. He notes that some units in the building were being offered for use. He could not determine that the rental unit in question was being offered for short term rental by the tenant.

The tenant testifies denying that she is renting out her apartment. She says that she is an accountant and in times other than tax season she travels and spends time away. She says that her brother stays in her apartment sometimes. The U.S. woman is a friend, as are the couple Mr. M.V. met in August. Her friends, she says, stay for free. She does not advertise the apartment.

Analysis

The ending of a tenancy is a serious matter. A landlord seeking to do so will be required to strictly comply with the rules and procedures permitting it. Only those allegations contained in the Notice will be considered as grounds for ending the tenancy.

The first ground stated in the Notice is that the tenant has allowed an unreasonable number of occupants in her rental unit. That allegation has not been proved. The evidence indicates that at most two, possibly three people were occupying the apartment for a week in August. It has not been shown nor can it be inferred that such a number over such a period is unreasonable. A single person occupying a one bedroom apartment might well have two guests visiting for a week, without any hint of it being unreasonable.

The second ground is that the tenant has assigned or sublet the rental unit without the landlord's consent. The particulars given in the Notice state "unauthorized Air B&B." That allegation has not been proved.

The offering of accommodation through sharing services like AirBnB, might be considered to be a subletting but it has not been proved that the tenant was offering her apartment through a sharing service

or was otherwise conveying exclusive possession of the rental unit to anyone for any period of time or for any compensation.

The failure by the landlord to locate and confirm the posting of this accommodation on the AirBnB website is virtually conclusive refutation of the allegation in the Notice's particulars. Though the website did not contain pictures of the apartments in the building that were posted on the website, a simple follow up would have shown whether indeed this tenant was offering this rental unit as a place to rent.

Conclusion

The tenant's application is allowed. The one month Notice to End Tenancy dated September 11, 2017 is cancelled.

As she has been successful on this application, the tenant is entitled to recovery the \$100.00 filing fee. I authorize her to reduce her next rent due by \$100.00, in full satisfaction of the fee.

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: October 18, 2017

Residential Tenancy Branch