



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNL FF O

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (“the Act”) for an order as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause (“1 Month Notice”) pursuant to section 47 of the *Act*;
- to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property (“2 Month Notice”) pursuant to section 49 of the *Act*;
- other unspecified orders; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant, and the landlord appeared at the hearing. The landlord was assisted by his daughter S.K., while witness T.T. also appeared at the hearing for the landlord. All parties present were given a full opportunity to be heard, to present their testimony and to make submissions.

The tenant acknowledged receipt of two separate notices to end tenancy. The first is a 2 Month Notice to End Tenancy for Landlord’s Use of Property (“2 Month Notice”) given on, or around August 1, 2017. The second notice is a 1 Month Notice to End Tenancy for Cause (“1 Month Notice”) given on August 8, 2017. Pursuant to section 88 of the *Act*, the tenant is found to have been duly served with these notices in accordance with the *Act*.

The landlord acknowledged receipt of the tenant’s application for dispute resolution and evidentiary package sent by way of Canada Post Registered Mail. Pursuant to sections 88 & 89 of the *Act*, the landlord is found to have been duly served with these documents.

The tenant confirmed that no evidentiary package was received from the landlord.

Issue(s) to be Decided

Can the tenant cancel the landlord's notices to end tenancy? If not, should an Order of Possession be granted?

Is the tenant entitled to a return of the filing fee?

Background and Evidence

The tenant explained that this tenancy began in October 2015 and that rent was currently \$2,500.00. A security deposit of \$1,250.00 collected at the outset of the tenancy continues to be held by the landlord.

The landlord stated that he had issued two separate Notices to End Tenancy. He said the 2 Month Notice was issued to the tenant because he had *failed to qualify for a subsidized rental unit*.

When asked to describe how the rental unit was subsidized the landlord could not provide an answer. I informed the landlord that subsidized housing generally applies to any housing where the government provides some sort of monetary assistance. The landlord acknowledged that rental unit in question was not in fact subsidized housing as per that definition and was in fact owned outright by him.

The second Notice to End Tenancy issued to the tenant was a 1 Month Notice for Cause. This notice indicated that the landlord was seeking an end to the tenancy because the tenant had *assigned or sublet the rental unit/site without landlord's written consent*.

At the hearing, the landlord's daughter explained that the tenant had been posting the rental unit (both downstairs and upstairs), along with an RV on AirBnb. She stated that the landlord had received numerous warning letters from the City, and had also incurred a fine from the City for improper use of the property. The landlord informed that numerous AirBnb advertisements were found offering the rental unit to short term renters.

The landlord argued that while he had originally granted permission to the tenant to sublet the rental unit, the parties had signed a new tenancy agreement in 2016 which did not allow for this. Witness T.T. testified that he often acts as agent for the landlord because he is based locally, and the landlord lives in northern British Columbia. T.T. said that he and the tenant signed a new tenancy agreement in 2016 which contained an addendum prohibiting subletting of the rental unit.

The tenant did not deny that he had sublet portions of the rental unit but said that had been granted permission from the landlord to do so. The tenant denied that the agreement signed in 2016 prohibited him from subletting the unit and stated that the landlord had been aware of his actions. Furthermore, the tenant questioned why the landlord had never previously questioned his actions regarding subletting and he said the landlord had not provided any written warnings expressing his concern for the tenant's actions. The landlord disputed this and said he had sent an email in August 2017 citing his concerns to the tenant about subletting. The landlord could not recall the date this email had been sent and the tenant denied seeing this email.

Analysis

At the hearing the landlord asked if he could submit evidence to strengthen his argument that his notices to end tenancy were valid. I declined to accept this evidence as the landlord had sufficient notice of the hearing and a fair opportunity to submit evidence in support of his notices to end tenancy prior to the hearing in accordance with the *Residential Tenancy Branch's Rules of Procedure*.

Residential Tenancy Rules of Procedure 3.15 states, "The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing."

The tenant supplied the landlord with his evidentiary package and with notice of this hearing. Allowing the landlord to supply late evidence at the hearing in support of his notices to end tenancy would not allow the tenant time to properly consider the documents.

The landlord served the tenant with two separate Notices to End Tenancy. On, or around August 1, 2017 the tenant was served with a 2 Month Notice for Landlord's Use of Property. The reason cited on this notice was that the tenant *failed to qualify for a subsidized rental unit*. No evidence was presented at the hearing that this rental unit was a subsidized rental unit. The owner confirmed that he was the owner and this property was not rented through any government or third party agency whereby the occupant was or could have been in receipt of a monetary subsidy or assistance. I find that the landlord has failed to show how the tenant occupies a subsidized rental unit,

and how he no longer qualifies for such assistance. The landlord's 2 Month Notice is dismissed.

In addition to an application to cancel a 2 Month Notice, the tenant has applied to cancel the landlord's 1 Month Notice for Cause. The landlord explained to the hearing that the tenant had been subletting the rental unit without the landlord's written permission. The landlord argued that while the tenant had previously been permitted to sublet portions of the property, this right had been rescinded in the parties' 2016 tenancy agreement. The landlord, along with witness T.T. both said that this tenancy agreement contained an addendum that did not permit subletting.

At the hearing the tenant acknowledged subletting the rental unit; however, he argued that he had been granted permission. He denied the existence of such a clause in the 2016 rental agreement and said that he had received no communication from the landlord regarding any concerns that the landlord had about subletting. He said that witness T.T. regularly inspected the rental unit and was aware that areas of the property were being sublet.

While I find the testimony of the landlord, his agent and witness to be credible, I find that the landlord has failed to provide any documentary evidence regarding the existence of AirBnb postings, the warnings and fines they have received from the City and the presence of an addendum in the 2016 rental agreement prohibiting subletting of the rental unit.

When a tenant challenges a notice to end tenancy, the burden of proof is reversed, and the landlord who has issued the notice to end tenancy must show why he has a right to an order of possession. I find that the landlord has failed to show on a balance of probabilities, that is more likely than not, that the tenant had sublet the rental unit without permission and counter to the terms of the tenancy agreement. As noted above, the landlord provided no documentary evidence to support his claim when one would expect such evidence to be readily available. For these reasons, I allow the tenant to cancel the landlord's 1 Month Notice.

This tenancy shall continue until it is ended in accordance with the *Act*. As the tenant was successful in his application, he may recover the \$100.00 filing fee from the landlord. Pursuant to section 72 of the *Act*, the tenant may on one occasion, withhold \$100.00 from a future rent payment in satisfaction for a return of the filing fee.

Conclusion

The tenant's application to cancel the landlord's notices to end tenancy is successful.

This tenancy shall continue until it is ended in accordance with the *Act*.

The landlord's 1 Month Notice is cancelled and is of no force or effect.

The landlord's 2 Month Notice is cancelled and is of no force or effect.

The tenant may recover the filing fee from the landlord, and may on one occasion, withhold \$100.00 from a future rent payment.

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: November 22, 2017

Residential Tenancy Branch