



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HANSENPACIFIC PROPERTY DEVELOPMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, ERP, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- an order that the landlord make emergency repairs to the rental unit pursuant to section 33; and
- to recover the filing fees for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The corporate landlord was represented by its agent AW (the "landlord") and the property owner was also present to give additional testimony.

As both parties were present I confirmed that there were no issues with service. The tenant confirmed receipt of the landlord's 1 Month Notice and evidence. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. I find that the parties were duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

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

Should the landlord be ordered to make emergency repairs to the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This fixed term tenancy began in September, 2017. The monthly rent is \$4,000.00 payable on the first. The rental unit is a single detached home with multiple bedrooms. The addendum to

the tenancy agreement signed by the parties provides that the tenant is not allowed to sublet the house.

The landlord issued a 1 Month Notice and indicated the reasons for issuing the notice as:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant has assigned or sublet the rental unit/site without landlord's written consent

The parties agree that the tenant has been advertising and allowing guests to occupy portions of the rental unit through AirBnB. The landlord said that the unreasonable number of occupants is sequential and not at any one time. The landlord said that the tenancy agreement prohibits the tenant from operating a commercial business in the rental unit and the tenant is therefore in breach of the agreement.

The tenant testified that he had informed the landlord from the outset they intended to rent out the other rooms in the rental unit and the landlord consented.

The tenant testified that the heater for the rental unit has been malfunctioning and submits that the entire rental unit used considerable power.

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 has allowed an unreasonable number of occupants into the rental unit and has assigned or sublet without the landlord's authorization.

An assignment, as defined under the *Act*, is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party. Both parties gave evidence that the tenant continues to reside in the rental building. Therefore, the definition of an assignment does not apply.

Residential Tenancy Policy Guideline 19 provides that a sublet is where the original tenancy agreement remains in place and the tenant and the sub-tenant enter into a new sub-lease agreement. The tenant effectively becomes the "landlord" of a new sub-lease tenancy agreement.

Landlord is defined in section 1 of the Act as:

- (a) The owner of the rental unit, **the owner's agent or another person who, on behalf of the landlord,**
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement...

- (c) a person, **other than a tenant occupying the rental unit...**

Guideline 19 provides that, "unless the tenant is acting as an agent of the landlord or has moved out of the unit, this is not a true sublet under the RTA. It is unlikely that a One Month Notice to End Tenancy (form RTB-33) for cause for the tenant's failure to obtain the landlord's written consent to sublet would be successful in these circumstances".

Based on the undisputed evidence of the parties the tenant was not acting as an agent of the landlord nor did he move out of the rental unit. In these circumstances I find that there was no assignment or sublet to give rise to the landlord's issuance of a 1 Month Notice.

The parties testified that there have been multiple guests in the rental building. I find that there is insufficient evidence that the number of guests/occupants in the rental unit at any given time has been unreasonable. The landlord has submitted evidence that there are multiple beds in the rooms of the rental building. Based on the photographs submitted and the parties' testimony, the beds are placed in various rooms throughout the rental building. I find that, even if there are multiple guests/occupants in the rental building at any given time, there is insufficient evidence that the total number of occupants is unreasonable.

I find that the landlord has not established sufficient cause for ending this tenancy. Accordingly, I allow the tenant's application and cancel the landlord's 1 Month Notice.

I find that there is insufficient evidence that the central heating system in the rental building is in need of repairs. The tenant submitted into written evidence in support of this claim an invoice showing that work was completed for repairs. There is no further documentary or witness statements to collaborate the tenant's testimony that the heating requires additional work. I find that the evidence submitted is insufficient to find that there repairs are necessary. Consequently, I dismiss this portion of the tenant's claim.

As the tenant's claim was mostly successful I find it appropriate to issue an order that the tenant may recover the \$100.00 filing fee for this application. As this tenancy is continuing the tenant may deduct \$100.00 from the next monthly rent payment in satisfaction of this monetary order.

Conclusion

The tenant's application to cancel the 1 Month Notice is granted. The 1 Month Notice is of no further force or effect.

The tenant's application for a repair order is dismissed without leave to reapply.

The tenant is issued a monetary award of \$100.00. The tenant may deduct \$100.00 from the next scheduled rent payment in satisfaction of this award.

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: January 22, 2018

Residential Tenancy Branch