



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRST INVESTMENTS CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

<u>Dispute Codes</u>	Landlord:	OPC MNDC FF
	Tenant:	CNC FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord’s Application for Dispute Resolution was made on January 30, 2018 (the Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- an order of possession based on a One Month Notice to End Tenancy for Cause, dated November 24, 2017 (the “One Month Notice”);
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on December 3, 2017 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order cancelling the One Month Notice; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by S.B., an agent. The Tenants attended the hearing on their own behalves. All providing oral testimony provided a solemn affirmation.

On behalf of the Landlord, S.B. testified the Landlord's Application package and documentary evidence was served on the Tenants by registered mail. The Tenants acknowledged receipt. Further, the Tenants testified the Tenants' Application package and documentary evidence was served on the Landlord by registered mail. S.B. confirmed receipt on behalf of the Landlord. No further issues were raised with respect to service or receipt of the above documents. Pursuant to section 71 of the *Act*, I find the parties were sufficiently served with the above documents for the purposes of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The parties were advised that Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. In these circumstances, I find it appropriate to exercise my discretion to sever the all but the Landlord's Application to end the tenancy based on the One Month Notice, and the Tenants' Application requesting an order cancelling the One Month Notice. The Landlord is granted leave to reapply for the monetary relief sought at a later date.

Issues

1. Is the Landlord entitled to an order of possession based on the One Month Notice?
2. Are the Tenants entitled to an order cancelling the One Month Notice?
3. Is either party entitled to recover the filing fee paid to make the Applications?

Background and Evidence

The parties agreed the fixed-term tenancy began on June 1, 2017, and was expected to continue until May 31, 2018. The tenancy agreement stipulates that the Tenants must vacate the rental unit at the end of the fixed term. Rent in the amount of \$2,400.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$1,200.00, which the Landlord holds.

On behalf of the Landlord, S.B. provided oral testimony in support of the One Month Notice. She testified that within one or two days after the Tenants occupied the rental unit, the previous tenant contacted her. The previous tenant was upset because an AirBnB listing had been posted online. According to S.B., the listing included photographs of the interior of the rental unit and the previous tenant's furniture. From this, S.B. surmised that the Tenants likely took photographs for the purpose of the AirBnB listing when the rental unit was viewed.

Referring to email correspondence submitted into evidence, S.B. testified that she asked the Tenants to remove the AirBnB listing. For example, in an email from S.B. to N.G.T. dated July 7, 2017, S.B. stated: "Kindly remove any form of advertisement or solicitation for rental, sublet, airbnb or the like immediately." This was followed by an email dated July 11, 2017, which stated: "You are not permitted to have any other ads with respect to the premises for such Airbnb or similar offerings." S.B. believed at that time that the matter had been resolved.

However, in November 2017, S.B. received a complaint from a tenant about people coming and going. She looked online and observed the AirBnB listing was still active. S.B. testified further that the AirBnB listing was still active on January 30, 2018, and provided a screen print of the listing in support. S.B. testified that the rental unit has received 17 reviews since the tenancy began, which is suggestive of the number of guests who have stayed in the rental unit. As a result, the Landlord issued the One Month Notice.

The Landlord relied on paragraph 14 of the tenancy agreement, which states, in part:

USE OF RENTAL UNIT. *The tenant and his guests must use the rental unit for private residential purposes only and not for any illegal, unlawful, commercial, political, or business purposes.*

[Reproduced as written.]

The Landlord also relied on paragraph 16 of the tenancy agreement, which states, in part:

ASSIGN OR SUBLET. *The tenant may assign or sublet the rental unit to another person with the written consent of the landlord.*

[Reproduced as written.]

The Tenants did not dispute that the rental unit has been listed on AirBnB as claimed. However, K.Y. testified that she met with S.B. at the beginning of the tenancy and that S.B. gave permission for her to operate her business from her home. By extension, the Tenants thought it would be acceptable to list the unit on AirBnB as a business. The Tenants also testified to their belief the One Month Notice was issued to circumvent recent legislative changes that limit a landlord's ability to rely on a vacate clause at the end of a fixed-term tenancy.

Both parties provided oral testimony relating to concerns about safety (on the part of S.B.) and privacy (on the part of the Tenants).

Analysis

Based on all of the above, the evidence and unchallenged testimony, and on a balance of probabilities, I find as follows.

Section 47 of the *Act* permits a Landlord to end a tenancy for cause in the circumstances described therein. In this case, the Landlord issued the One Month Notice on a number of bases. However, the submissions and evidence of S.B. were primarily directed to a breach of a material term of the tenancy agreement as the basis for ending the tenancy.

In this case, the Landlord's evidence confirmed, and I find, that the Tenants listed the unit on AirBnB when the tenancy began. Although the Tenants submitted that S.B. gave permission to do so during a conversation at the beginning of the tenancy, I find this is an untenable position. The email correspondence submitted by the Landlord ought to have disabused the Tenants of the notion they had the Landlord's consent to list the rental unit on AirBnB.

Accordingly, I find the Tenants breached a material term of the tenancy agreement by continuing to list the rental unit on AirBnB. The tenancy agreement is between the Landlord and the Tenants. It is clearly stipulated that the tenants cannot engage in commercial or business enterprises out of the rental unit, and cannot assign or sublet without the Landlord's written permission. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenants.

With respect to the Tenants' submission that the One Month Notice was issued to circumvent recent legislative changes that limit a landlord's ability to rely on a vacate clause at the end of a fixed-term tenancy, I find there is insufficient evidence before me to draw this conclusion.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I order that \$100.00 may be deducted from the security deposit held at the end of the tenancy.

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. The order may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord remains at liberty to apply for monetary relief at a later date.

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: February 20, 2018

Residential Tenancy Branch