



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ZETAN ENTERPRISES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNR, FFT, LRE, MNDCT

Introduction

This hearing was convened in response to the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The tenant requested:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47;
- a monetary order for compensation for loss or damage under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application, pursuant to section 72.

Preliminary Issues

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. At the outset of the hearing, the landlord advised that the rent has been paid in full and that the landlord is pursuing an order of possession pursuant to the One Month Notice to End Tenancy for Cause only, accordingly; I hereby set aside the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 12, 2017 with an effective date of December 22, 2017.

The tenant advised that he amended his application and was seeking a monetary claim as compensation. The landlord advised that they have no knowledge of this monetary claim as they were not served the documents. The tenant was unable to provide sufficient evidence to show that the landlord was served with this amendment. In addition the tenant submitted this amendment 13 days prior to the hearing which is less than the required 14 days as noted in the Rules of Procedure. It was explained to the tenant that due to the insufficient proof of service of the evidence and the short notice, this portion of his claim would not be heard on this day, the tenant indicated that he understood, accordingly; I dismiss the tenants' monetary claim with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to have the One Month Notice to End Tenancy for Cause set aside? If not, is the landlord entitled to an order of possession.

Is the tenant entitled to an order suspending or setting conditions on the landlords right to enter the unit?

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

Background and Evidence

The landlord gave the following testimony. This fixed-term tenancy began on December 1, 2016, with monthly rent set at \$2,400.00, payable on the first of each month. The fixed term ended on November 30, 2017 whereby the tenancy became a month to month tenancy. The rent increased to \$2488.80 on December 1, 2017. The landlords collected, and still hold, a security deposit of \$1,200.00. The tenant continues to reside in the rental unit.

The landlord issued the 1 Month Notice November 27, 2017 to the tenant. The landlord issued the notice on the following grounds:

- *Tenant has allowed an unreasonable number of occupants in the unit/site.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*
- *Tenant has assigned or sublet the rental unit/site without landlord's written consent.*

The landlord testified that the tenant sublet the unit without his authorization and has an unreasonable number of people living in the unit. The landlord testified that the tenant has converted the two bedroom unit into a three bedroom unit. The landlord testified

that he “thinks” the tenant is running an Airbnb. The landlord testified that these are all breaches of the tenancy agreement and seeks an order of possession.

The tenant gave the following testimony. The tenant testified that he advised the landlord when he first viewed the apartment that his employees would be living in the unit as part of their employment for his software company. The tenant testified that he has abided by all the rules of the strata and has never been fined or even warned of an infraction. The tenant testified that all his employees are registered with the concierge. The tenant testified that no alterations have been made to the unit. The tenant testified that they have a large Ikea wardrobe dresser in the unit that’s used as a “backdrop” for video conferences and moved from room to room depending on the employee’s needs. The tenant testified that no nailing, drilling or renovations have been conducted. The tenant wishes to remain in the unit.

Analysis

When a landlord issues a notice under Section 47 of the Act they bear the responsibility in providing sufficient evidence to support the issuance of that notice. The landlord made allegations that the tenant was subletting the unit or running an Airbnb and that he had an unreasonable number of people living in the unit thus causing a material breach of the tenancy agreement. However, the landlord did not provide sufficient evidence to support this other than his allegations. The tenant testified that the landlord was advised at the outset of the tenancy that he would have different employees living in the unit as part of their work contract, hence the rental in the company name. The tenant testified that he has not sublet the unit as this was made clear to the landlord that the company and he as a director of the company would guarantee payment and would be the contact person.

Although there is clearly some misunderstanding and miscommunication between the tenant and the landlord I find that the tenant has provided a reasonable explanation as to the different people living in the unit. In addition, the tenant advised that each new person is registered with the concierge in accordance with the Strata by-law, to which the landlord did not dispute. As stated above, the landlord bears the responsibility to provide sufficient evidence to show that the tenancy must end. In this case, the landlord has failed to provide sufficient evidence to support any of the grounds that the notice was issued on, accordingly; I hereby set aside the One Month Notice to End Tenancy for Cause dated November 27, 2017 with an effective date of December 31, 2017.

The tenant was seeking an order suspending or setting conditions on the landlords' right to enter the unit. The landlord advised that he only entered one time due to an emergency due to a water leak. The tenant did not provide sufficient evidence to support this portion of his claim that would require suspension or conditions for entry and I therefore dismiss this portion of his application.

As the tenant has been successful in this application, I find that the tenant is entitled to the recovery of the \$100.00 filing fee. The tenant is entitled to a one time rent reduction of \$100.00 from the rent due on March 1, 2018. For absolute clarity, the rent due on March 1, 2018 is \$2388.80.

Conclusion

The One Month Notice to End Tenancy for Cause is set aside and of no force or effect. The tenancy continues.

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 22, 2018

Residential Tenancy Branch