



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC RP FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for: cancellation of the landlords' 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 47; an order that the landlords make repairs to the rental unit pursuant to section 33; and authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenants confirmed receipt of the landlords' Notice to End tenancy and the landlords confirmed receipt of the tenants' Application for Dispute Resolution.

Issue(s) to be Decided

Should the landlords' 1 Month Notice be cancelled? Or are the landlords entitled to an Order of Possession? Are the tenants entitled to an order that the landlords make repairs? Are the tenants entitled to the recovery of the filing fee for this application?

Background and Evidence

This tenancy began on July 11, 2011. The most recent tenancy agreement between the parties showed a 2 year fixed term tenancy with a start date of July 1, 2017 and a fixed end date of June 30, 2019. A copy of this most recent residential tenancy agreement was submitted for this hearing showing a monthly rental amount of \$2350.00. The parties agreed that the current rental amount of \$2450.00 is payable on the first of each month. The agreement also showed an \$1175.00 security deposit held by the landlords and provided by the tenants at the outset of this tenancy.

The parties agreed that there was a no-smoking policy for the building and that they had been asked, on more than one occasion, to not smoke inside the rental unit. They testified that it was in fact the other resident who smoked in the rental unit and that, after their warnings from the landlord, they asked him to no longer smoke outside. However, the landlord provided largely undisputed testimony that the resident continued to smoke in the rental unit – he noticed himself and he received complaints about the smoke smell. The landlords issued a 1 Month Notice to End Tenancy for Cause on February 2, 2018. In that Notice, requiring the tenants to end this tenancy by March 31, 2018, the landlords cited the following reasons for the issuance of the Notice:

- *Tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
 - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *Tenant has caused extraordinary damage to the unit or property;*
- *Tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;*
- *Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park;*
- *Tenant has assigned or sublet the rental unit/site without landlord's written consent.*

The landlords' lawyer provided testimony on the landlords' behalf (hereinafter "the landlord") testified that the tenants and the landlords both reside on the residential premises. The landlord testified that, in January 2018, the landlord encountered someone that he did not know on the premises. The landlord testified that the person he met described themselves as a new tenant and that the person referred to the tenants as the landlords. The landlord testified that, during the month of January 2018, the landlord also noticed an increase in disturbances including but not limited to loud noise and an excess of people at the rental unit.

The landlord referred to section 9 of the residential tenancy agreement submitted as evidence for this hearing that prohibits any unauthorized sublet or assignment of the rental unit. During the course of the hearing, the tenants testified that they rented out their son's room when he moved out and that they had sublet the rental unit so that they did not break their fixed term lease or fall short on rent payments. Tenant RW described his actions as a mistake based on ignorance of the prohibition to sublet the rental unit without prior permission.

Analysis

The landlords and tenants as well as the other assistants present for this hearing all provided a substantial amount of information and evidence. I have considered carefully all of the materials submitted and the points made by both parties in attendance at this hearing. However, in this decision, I have only reproduced above the most relevant portions of the extensive testimony. I will reproduce the relevant points of evidence that assisted in determining whether the parties met their burden of proof in this matter.

With respect to the burden of proof, when a tenant makes an application to cancel a notice to end tenancy, the burden falls to the property owners to justify the grounds to end the tenancy and the validity of the notice. I will concentrate on the ground for ending the tenancy that I find most compelling. I find that the landlords have provided sufficient evidence on more than one ground provided in the notice to end tenancy. However, I rely on the ground that the tenants or a person allowed on the property by the tenant(s) significantly interfered with or unreasonably disturbed another occupant or the landlord. I find that the complaints for smoking in the rental unit were not addressed by the tenants' guest after the tenants and the tenants' guest had been warned not to do so.

I also find that the landlords have satisfied the ground to end tenancy regarding subletting without permission and/or taking on an additional resident without permission. Tenant RW stated that this was a mistake and that he was unaware of the prohibition to sublet or assign within his own residential tenancy agreement and the Residential Tenancy Act as provided below. However, I must consider the relevant law and policy regardless of whether the tenant made himself aware of the Residential Tenancy Act, the other relevant legislation and particularly the residential tenancy agreement that he signed for this tenancy.

I provide a portion Residential Tenancy Policy Guideline No. 19 that includes information and helps explain the rules regarding occupants of a rental unit or roommates under the more general subject of Subletting or Assignment.

... Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlords, remains in the rental unit, and rents out a room or space within the rental unit to a third party. ... The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act... [this is not considered to be a sublet]. ...

An example is provided with a similar fact pattern to the situation of these tenants and landlords.

Example: John's original tenancy agreement with the landlord contained a term that he and the landlord agreed that John would not allow other occupants to move into the rental unit without first obtaining the landlord's written consent... John didn't talk to the landlord and get his written consent to have a roommate....Upon discovering the situation, the landlord issued a One Month Notice to End Tenancy (form RTB-33) for a breach of a material term, i.e. John got a roommate without first obtaining the landlord's consent... John challenges the notice but at the hearing, an arbitrator determines that the term of the tenancy agreement was enforceable and upholds the notice to end tenancy.

In this matter, the tenants signed a residential tenancy agreement that included the provision that “[t]he tenant may assign or sublet the rental unit to another person with the written consent of the landlord.” I find that the specific term of the residential tenancy agreement was clear. I find that the intent of the writing of this section of the agreement was also clear: I accept the testimony of the landlord that the tenants must seek the landlords’ approval of a change of the occupants in the rental unit. I find that the tenants did not seek the landlords’ permission. The new resident to the rental unit is not a guest and while this arrangement between the new resident and the tenants is not a sublet, I find that, given the wording of the tenancy agreement and the permanent nature of the change to the residents in the unit required the tenants to advise the landlords of the change.

Policy Guideline No. 19 states that each case must be considered on its own facts with respect to additional occupants, assignments or sublets. I find that the landlord has provided sufficient evidence to show that another occupant has joined the rental unit living space and that he was not advised or consulted with respect to this change. “It is up to the original tenant to seek the landlord's consent.” (Policy Guideline No. 19). I find that the tenants should have sought permission and that they did not do so.

Based on the evidence submitted for this hearing and the testimony of both the landlords and the tenants, the new resident/occupant has not been authorized by the landlord and has caused aggravation to other occupants of the building as well as the landlords. Even if the tenants were not required to seek the landlords' permission to move this party into the unit, if this new resident continually breaks the rules, then the tenants must be held responsible for their roommate's actions.

The nature of the landlord – tenant relationship requires communication that is both respectful and clear. Both have rights and obligations to meet under the Act. I find that the landlords met their obligation in attempting to resolve the issues with respect to noise and with respect to new resident in the rental unit. From a principled and common sense perspective, without restricting guests or visitors access to the rental unit and the tenants unreasonably, the tenant has an obligation to seek the permission of the landlords to bring in new residents/tenants. I find, based on the correspondence submitted as evidence between the parties and the testimony of both parties at this hearing, the landlord warned the tenants with respect to the consequences of taking on additional occupants and more pertinent, the consequences of any actions of the tenant in the rental unit that violate the residential tenancy agreement or the Act. I find that smoking cigarettes inside the residence (after being asked not to do so) as well as other disrupting behaviour is sufficient to end the tenancy, in all of the circumstances.

Based on the evidence before me, I find that the landlords have shown sufficient grounds to validate the 1 Month Notice issued to the tenants and to obtain an end to this tenancy for Cause. The tenant's application pursuant to section 47(4) of the *Act* to cancel the notice to end tenancy is dismissed. Therefore, in accordance with section 55(1) of the Act, I find that the landlords are entitled to a 2 day Order of Possession for the rental unit.

The tenant also applied for repairs to the rental unit. However, as the tenancy will end, I find that it is not necessary to order repairs as requested by the tenant. Further, they did not apply for a monetary amount within their application for dispute resolution.

As the tenant was unsuccessful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the tenant's application **in its entirety**. The tenancy shall end.

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: April 24, 2018

Residential Tenancy Branch