Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS HOLDINGS
FIRSTSERVICE RESIDENTIAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF; CNC, MNDC, OLC, PSF, AAT, AS, RR, FF

Introduction

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

- an Order of Possession for cause, pursuant to section 55; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause, dated February 7, 2018 ("1 Month Notice") pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order requiring the landlords to provide services or facilities required by law, pursuant to section 65;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests, pursuant to section 70;
- an order allowing the tenant to assign or sublet because the landlords' permission has been unreasonably withheld, pursuant to section 65;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for her application, pursuant to section 72.

The landlords' agent ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions

and to call witnesses. This hearing lasted approximately 92 minutes in order to allow both parties to fully present their submissions.

The landlord testified that he was the property manager for "landlord company FSR," which is the property management company for the rental unit and that he had permission to speak on its behalf as well as on behalf of "landlord company BBH," which is the owner of the rental unit (collectively "landlords"). "Witness JS," who is the rental unit building manager, testified on behalf of the landlords at this hearing regarding service and receipt of documents, and both parties had equal opportunities to question the witness.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The tenant testified that she personally delivered a USB drive, which contained approximately 300 pages of evidence and digital files, to witness JS on April 16, 2018. Witness JS could not recall the date of service, stating that he thought it was around April 22 or 23, 2018. He testified that he told the tenant when she gave him the USB drive that the landlords would not be able to open it on the landlords' work computers because it would cause an issue for the company security network. He claimed that the tenant told him that she could not print out 300 documents for the landlords. The tenant agreed that witness JS told her that the landlords could not open the USB drive but she thought he would follow up with her later, so she did not follow up herself. Witness JS stated that he provided the USB drive to the landlord, who claimed that he received it from witness JS on April 18, 2018, and stated that because of the landlords' security policies, he could not open the USB drive at all on the landlords' work computers.

The tenant said that she did not ensure that the landlords could see the USB drive contents before the hearing. In accordance with Rule 3.10.5 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*, I notified both parties at the hearing that I was unable to consider the tenant's USB evidence at the hearing and in my decision because the tenant did not ensure that the landlords had the ability and equipment to view the evidence at least 7 days prior to the hearing, as required by the above rule.

The landlord testified that the tenant was served with the landlords' 1 Month Notice on February 7, 2018, by way of registered mail. The tenant confirmed receipt on February

8, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' 1 Month Notice on February 8, 2018.

Issues to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession for cause?

Is the tenant entitled to the relief she requested above?

Background and Evidence

While I have turned my mind to the landlords' documentary evidence and the testimony of both parties, not all details of the respective submissions are reproduced here. The important and relevant aspects of both parties' claims are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2013, with the same owner (landlord company BBH) but a different property management company "landlord company CI" listed on the parties' written tenancy agreement, which both parties signed. The current property management company (landlord company FSR) assumed the tenancy sometime in 2014. A copy of the written tenancy agreement was provided for this hearing. Monthly rent in the current amount of $1,347.00 is payable on the first day of each month. A security deposit of $625.00 was paid by the tenant and the landlords continue to retain this deposit. The tenant and her son continue to reside in the rental unit. The rental unit is a three-bedroom, two-bathroom, two-level townhouse of approximately 1,100 square feet.

The landlords' 1 Month Notice indicates an effective move-out date of March 31, 2018. The landlords issued the notice for the following reason:

- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlords seek an order of possession based on the 1 Month Notice and to recover their $100.00 application filing fee. The tenant seeks to cancel the 1 Month Notice and to recover her $100.00 application filing fee. The tenant also seeks orders for the landlords to allow her to rent out a room in her rental unit to other tenants and receive rent from them.

The tenant also seeks a monetary order totalling $4,011.34 from the landlords. She seeks $11.34 for registered mail fees and $900.00 ($50.00 x 18 months) due to the landlords' failure to repair the patio door pursuant to a previous RTB hearing order from December 2015. The tenant further seeks $600.00 ($50.00 x 12 months) for a loss of visitor parking because she claimed that witness JS refused to grant her request that no residents use the visitor parking while living at the rental building such that the tenant's visitors could not park there. The tenant seeks $2,400.00 ($600.00 x 4 months) in lost rent from potential tenants that the tenant said the landlords scared away because they would not allow her to rent one of her rooms out and served her with the 1 Month Notice for this reason.

The landlord testified that the tenant breached a material term of the tenancy agreement by renting out a room in the rental unit to other occupants without the landlords' permission or ability to verify and approve these occupants. The landlord claimed that the tenant rented the room to international students, took first month's rent and a security deposit from them and then ended their tenancy shortly thereafter, while keeping all their money. He stated that the tenant is a licensed property manager, strata property manager and managing broker and is well aware of her obligations; the tenant did not dispute this fact.

The landlords provided copies of three letters that were issued to the tenant, dated July 4, 2016, March 20, 2017 and January 29, 2018, warning her that she could not rent out the room in her unit without the landlord's written approval and permission. In the letters, the landlords requested the name of the potential occupants so that they could complete credit and income verifications in order to determine suitability and then sign new agreements with the occupant names on them. The tenant acknowledged receipt of these letters.

The landlord claimed that witness JS was approached on October 31, 2017 by one of the tenant's unauthorized occupants "B," who he said was locked out of the rental unit and wanted to get his belongings and his security deposit back. He claimed that the occupant notified witness JS that he was scared of being deported, that he was told to leave and not help the landlords' case against the tenant. On January 17, 2018, the landlord stated that he found an online advertisement for a room for rent in the rental unit, and after gathering this proof, he served the tenant on January 29, 2018 by registered mail, with a notice to enter the unit on February 7, 2018. The landlord claimed that upon entering the rental unit for inspection, a different unauthorized occupant "A" was living there, who asked the landlord why the landlord wanted him to leave. The landlord stated that on the same date, February 7, 2018, the tenant was

issued the 1 Month Notice. He confirmed that on February 9, 2018, A approached witness JS to advise that the tenant was "freaking out" after receiving the 1 Month Notice and was throwing things. The landlord provided an email, dated February 9, 2018, from A addressed to witness JS, documenting the above events. The email provides earlier emails with the tenant, indicating that A was renting a room from her, he paid rent and a security deposit to her, the tenant was behaving in a "mentally unstable" way by throwing things around the kitchen and he was concerned for his safety, asking the landlord whether he should alert the police.

The tenant disputed the landlords' claims. She claimed that while she did rent out a room in her rental unit, she was given verbal permission from the landlords and her sister was given written permission in an email before she began her tenancy. She maintained that it was not a formal arrangement because she had a good relationship with the landlords initially. She stated that while she received the three breach letters from the landlords for renting out the room, after the first one in July 2016, she talked to the landlords who said they would not approve her to have anyone in her unit because it was too much of a burden on the property. She said that she did not respond to the two subsequent letters in writing or otherwise because she knew the landlords would not approve her occupants.

The tenant stated that she was not involved in evicting international students and taking their money. She said that she was friends with many of these students and still kept in touch with them after they left. She maintained that the landlords were trying to evict her because she asked for repairs to be done in December 2015 at a previous RTB hearing and it took the landlords a long time to complete. She said that she had an occupant renting a room in her unit from September 1, 2013 for a long time with no problems. She explained that B was not locked out of the rental unit on October 31, 2018, as she was at home that day, he was given notice one week into his tenancy to leave her rental unit two months later, and his security deposit was not returned because he did not clean before vacating.

The tenant maintained that she had good relations with A until the landlord approached him, he became erratic and violent towards her, he would scream, go in and out of the rental unit at all hours, and cook at 2:00 a.m. with spices that hurt the tenant's eyes, so she asked him to "tone down" the spices. The tenant testified that these are the reasons she asked A to vacate the rental unit. She claimed that the landlords probably offered A an incentive to help them get rid of the tenant but he was given his February 2018 rent back of $600.00 plus his security deposit.

Analysis

1 Month Notice

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant received the 1 Month Notice on February 8, 2018 and filed her application to dispute it on February 18, 2018. Accordingly, I find that the tenant's application was filed within the ten day time limit under the *Act*. Where a tenant applies to dispute a 1 Month Notice, the onus is on the landlords to prove, on a balance of probabilities, the ground on which the 1 Month Notice is based.

On a balance of probabilities and for the reasons stated below, I find that the landlords issued the 1 Month Notice for a valid reason. I find that the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice was given by the landlords.

Paragraph 13 of the parties' written tenancy agreement indicates that the tenant may not have any additional occupants residing in the rental unit aside from the occupants listed in paragraphs 1 and 2 of the tenancy agreement. Only the tenant and her son are listed in paragraphs 1 and 2 of the tenancy agreement. Paragraph 13 indicates that if the tenant has any other occupants reside in the rental unit for more than 14 cumulative days in a year, those occupants would be considered as occupying the rental unit contrary to the tenancy agreement and without the right or permission of the landlord. At the hearing, the tenant agreed that she had at least three other occupants residing in the rental unit and paying her rent, for more than 14 cumulative days during her tenancy. Since the tenant did not leave the rental unit while the other occupants resided in the unit together with her, this is not considered an assignment or sublet of the tenancy, as per Residential Tenancy Policy Guideline 19.

Paragraph 13 of the tenancy agreement notes that the tenant must obtain written approval from the landlord for other occupants to reside in the rental unit, the failure of which would be considered a material breach of the tenancy agreement, allowing the landlord to end the tenancy after proper notice to the tenant. The tenant agreed that she did not request, nor obtain written approval from the landlords for the three occupants to reside in the rental unit with her and her son. I do not accept the tenant's submission that her sister was given permission by the landlords via email for the tenant to have other people in the unit. The tenant agreed that the people living in the rental unit were not approved by the landlords and she received the three breach letters from

the landlords but did not respond to them because she said she knew the landlords would not approve her occupants. The tenant was aware that she was in breach but yet continued with her actions. The landlords' three breach letters cautioned the tenant about the additional occupants and asked the tenant to obtain written approval of these occupants after the landlord could perform reasonable credit and income verifications checks first. The tenant failed to submit names or ask for approval, admitting this during the hearing.

I find that the tenant had notice of paragraph 13 of her tenancy agreement when she signed the agreement on June 23, 2013, before her tenancy began on July 1, 2013. I find that the tenant was given at least three written warnings from the landlord in 2016, 2017 and 2018, about breaching a material term of the tenancy agreement and the tenant failed to correct these breaches, having at least three additional occupants reside there between 2013 and 2018.

I do not find that the landlord waived its right to issue a 1 Month Notice, since there was a time delay between the tenant's first occupant in 2013 and the last one in 2018. The tenant agreed during the hearing that she asked the third occupant to leave in February 2018 and refunded his rent for that month because she did not want any problems with the landlords and she did not want to bring in any new occupants until the matter was determined at this hearing by the RTB. The tenant agreed that she knew that landlords were not agreeable to her having additional occupants. Although the tenant did attempt to resolve the issue with the third occupant, I do not find that this is a correction of the breach within a reasonable time after written notice because she was given two previous warning letters in the two years prior, 2016 and 2017, and did not abide by them, resulting in the third warning letter and the 1 Month Notice. This is a deliberate pattern of behaviour, with the tenant agreeing she ignored the landlords' breach letters because she said she knew that she would not be able to obtain permission for additional occupants. She did not provide written proof of this denial of permission, indicating it was a verbal conversation.

I find that the tenant was wilful and deliberate in her actions at keeping unauthorized occupants in her unit when she was aware it was a material breach of her tenancy agreement. The tenant is a licensed property manager, strata property manager and managing broker so she has sophisticated knowledge of the housing and tenancy market as compared to others. Therefore, I find that the tenant was or should have been well aware of her written tenancy agreement clauses, which were written on a standard tenancy agreement form, as well as the principles regarding additional

occupants and the landlords' right to provide written approval after it is requested by the tenant.

Accordingly, I dismiss the tenant's application to cancel the 1 Month Notice and I grant the landlords' application to obtain an order of possession based on the 1 Month Notice, I find that this tenancy ends on May 31, 2018. The tenant confirmed that she would be paying monthly rent for May 2018 to the landlord on the date of the hearing, May 1, 2018, after the hearing was over. Therefore, I find that the tenant is entitled to possession of the rental unit until the end of May 2018. Accordingly, I find that the landlords are entitled to an Order of Possession, effective at 1:00 p.m. on May 31, 2018, pursuant to section 55 of the *Act*. I find that the landlords' 1 Month Notice complies with section 52 of the *Act*.

As the landlords were successful in their application, I find that they are entitled to recover the $100.00 filing fee paid for their application.

Tenant's Application

Since this tenancy is ending, I dismiss the remainder of the tenant's application relating to orders for the landlord to comply, provide services and facilities, allow access to the rental unit for the tenant and her guests, and allow the tenant to sublet or assign the tenancy.

I dismiss the tenant's application for registered mail fees of $11.34 to mail application documents related to this hearing. As notified to the tenant during the hearing, the only hearing-related fees recoverable under section 72 of the *Act* are for filing fees.

I dismiss the tenant's application for a loss of rent of $2,400.00 from potential additional occupants that she said the landlords scared away from her rental unit. As noted above, since the tenant was not entitled to have additional occupants in the rental unit, I find that she is not entitled to collect a loss of rent.

I dismiss the tenant's application for a rent reduction of $900.00 for a delay in patio door repairs and $600.00 for a loss of parking. I find that the tenant was unable to justify the above amounts being claimed, indicating only that she thought $50.00 per month for each type of loss, was a reasonable number.

Since the tenant was wholly unsuccessful in her application, I find that she is not entitled to recover the $100.00 filing fee paid for her application.

Conclusion

I grant an Order of Possession to the landlords **effective at 1:00 p.m. on May 31, 2018**. Should the tenant or any other occupants on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain $100.00 from the tenant's security deposit of $625.00, in full satisfaction of the monetary award for the filing fee. The remainder of the tenant's security deposit of $525.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

The tenant's entire 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: May 07, 2018

Residential Tenancy Branch