



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, OLC, FFT

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated March 17, 2018
- b. An order that the landlord comply with the Act, regulations and/or tenancy agreement.
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenant by mailing, by registered mail to where the tenant resides on March 17, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by the tenant was served on the landlord by mailing, by registered mail to where the landlord resides on April 4, 2018. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated March 17, 2018
- b. Whether the tenant is entitled to an order that the landlord comply with the Act, regulations and/or tenancy agreement?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on May 1, 2015 when the parties entered into a one year fixed term tenancy agreement. The rent was \$1600 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$800 at the start of the tenancy. The parties entered into two subsequent fixed term tenancy agreements with the latest provided that the tenancy would start on June 1, 2017 and end on May 31, 2018.

The tenant owns another suite in the strata complex. She is also on the strata council. She produced evidence of emails she exchanged with the landlord that advised the landlord she owned another unit in the strata complex that she was renting out because she found that it was a little small to live in and carry on her photography business. She also produced evidence from neighbours stating she was a good neighbour.

The landlord seeks to end the tenancy based on the following:

- The landlord testified that, unknown to her the tenant is using her rental unit as an Airbnb.
- She testified she lives in Australia. However, she submits the use of the rental unit as an Airbnb violates her insurance policy and she is unable to get insurance. The landlord produced a copy of her insurance policy. The landlord submits the insurance policy does not permit short term rentals. The landlord testified she has talked to her insurance provider who states it is not possible to get insurance for short term rentals.
- She testified a friend alerted her to this use of the property at the end of February and this was the first time she was aware the tenant was renting the property.
- The landlord testified there are a large number of responses on the Airbnb site stating they have rented the entire unit and stating how much they appreciated the tenant's role in hosting them.

The tenant gave the following testimony:

- She testified she used the rental unit for an Airbnb on six occasions in total with the last occasion occurring in September 2017. On those occasions she would remain in the rental unit during the day as she used it as a work place and would in the evening and spend the night with her boyfriend who lives a few blocks away. The rental unit was rented for about 3 nights each time.
- The strata complex has approximately 120 units. She owns another rental unit in the complex and rents it out.
- She lives in the rental unit in question using it as her living area and a home office.

- The rental property is not listed on an Airbnb site and she does not intend to re-rent it on Airbnb if the landlord objects. The calendar on the Airbnb site indicates it has been blocked off and not available for rent for many months.
- She produced a copy of her insurance policy which indicates she purchased a rider that her policy covers home sharing programs, like home exchanges or short term rentals.
- She produced several letters from neighbouring tenants stating that she is a good neighbor and supporting her.

Both parties attempted to introduce other evidence that was not relevant or inadmissible including attempts to settle the matter or conduct relating to other tenancies.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- 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
 - put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - jeopardize a lawful right or interest of another occupant or the landlord
- 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

Analysis:

I determined the tenant used the rental property for an Airbnb on six occasions with the latest being in September of 2017. The landlord alleged the tenant is operating the rental unit as a business renting it on a regular basis but failed to prove this allegation.

After carefully considering all of the evidence I determined the landlord failed to establish sufficient cause to end the tenancy for the following reasons:

- The landlord failed to provide sufficient evidence to prove that the tenant has allowed an unreasonable number of persons in the rental unit. I determined that even if the rental unit housed a couple under the Airbnb arrangement, this is not an unreasonable number of persons. The landlord testified there are over 85 on line reviews. However, the evidence produced by the landlord show 6 review all being in the summer of 2017.
- I determined the landlord failed to prove that the Tenant or a person permitted on the property has “significantly interfered with or unreasonably disturbed another occupant or the landlord. The landlord is presently living in Australia. There is no evidence from other occupants in the rental unit complaining about the conduct of the tenant or her guests. The only evidence from other occupants in the rental property supports the tenant. The tenant provided evidence that the landlord found the applicant to be a good tenant up to the date they found themselves in a dispute relating to the amount of rent increase.
- The landlord failed to produce sufficient evidence that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord or put the landlord’s property at significant risk. The landlord failed to produce sufficient evidence from her insurance provider that the insurance no longer covers because of the conduct of the tenant. The tenant produced evidence that her policy covers home exchanges including short term rentals. The evidence provided by the landlord is insufficient to establish this ground. The landlord testified her insurance provider told her the insurance would not cover but the landlord failed to provide evidence to prove this.
- The landlord failed to provide sufficient evidence that the tenant engaged in an illegal activity. She alleged the tenant has breached a law but failed to identify or provide evidence as to what law was broken.
- The landlord failed to prove the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. There is not provision in the tenancy agreement that prohibits the use of the rental property as an Airbnb. Further, the landlord failed to give the tenant written notice to rectify the breach.

- I determined the landlord failed to prove the tenant has assigned or sublet the rental property. I accept the evidence of the tenant that her belongings remained in the rental unit and that she returned to the rental unit each day to work. This is not an assignment or a sublet.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord failed to establish sufficient cause to end the tenancy. As a result I ordered that the Notice to End Tenancy dated March 17, 2018 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

As the tenant has been successful with this application I ordered that the landlord reimburse to the tenant the cost of the filing fee in the sum of \$100.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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 14, 2018

Residential Tenancy Branch