



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This is an Application for Dispute Resolution (“Application”) by the Tenant to cancel a One Month Notice to End Tenancy for Cause and for an Order requiring the Landlord to comply with the Act, regulations and/or tenancy agreement.

The Tenant and the Landlord both appeared for the scheduled hearing. I find that the notice of hearing was properly served and that evidence was submitted by both parties. I note that there was over 140 pages of evidence filed in this Application, primarily by the Respondent; the hearing took approximately 90 minutes to complete. Although all evidence was taken into consideration, only that which was relevant to the issues is considered and discussed in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Issues to be Decided

Is the Tenant entitled to a cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47(4) of the *Residential Tenancy Act* (“Act”)?

If not, is the Landlord entitled to an Order for Possession pursuant to 55 of the Act?

Is the Tenant entitled to an Order requiring the Landlord to comply with the Act, regulations and/or tenancy agreement, pursuant to section 62(3) of the Act?

Is the Tenant entitled to be paid the cost of their filing fee in the sum of \$100.00, pursuant to section 72 of the Act?

Background and Evidence

The current tenancy began on June 1, 2017; however, this Tenant has resided at the premises much longer, with other roommates. The monthly rent is \$2,350.00. The previous tenancy ended after the Landlord served a One Month Notice to End Tenancy and the other occupants complied, leaving this Tenant to enter into a new agreement with the Landlord.

She made it clear to the Landlord at that time that the amount of rent was too high for her and that she would require a roommate; eventually a roommate, "KO", moved in around January of 2018. The Tenant states that her roommate has given her notice due to the ongoing conflict with the Landlord and she plans to move out and will be living with her stepsister, who came to stay for a brief period while searching for accommodation in British Columbia.

The Landlord provided letters from his strata to him outlining some previous infractions from January, March and May of 2018; these letters were mainly with respect to noise complaints and there was no evidence of a monetary fine being issued. The Tenant states that she has never received a fine while living in the building. The Landlord argues that the infractions serve as additional evidence to justify an end to the tenancy.

The Tenant did not dispute the evidence produced by the Landlord in regard to a move-in fee paid by a third woman, CS, who the Tenant claims is her roommate's stepsister on or about March 31, 2018. The Landlord questions whether the woman is related to the roommate, however, the Tenant states that she is a personal friend and that the roommate and this third person are related. CS paid a fee to rent the elevator as she moved in some of her belongings as well as some of the roommate's things that she brought from her home in Alberta. The Landlord argues that this new person was an additional occupant, while the Tenant states that she was a guest, only planning to stay with her for 20 days.

The Landlord states that his insurance company only authorizes a maximum of two unrelated parties to rent his unit. He produced some emails from his insurer from the spring of 2017, predating the current tenancy agreement. He argues that the Tenant is well aware of this requirement and he was concerned when the third occupant was

seen to be moving into the unit. The Landlord provided a copy of the tenancy agreement and additional “regulations” to which the parties had signed.

The Landlord served a One Month Notice to End Tenancy for Cause on April 14, 2018 by registered mail and another copy again on April 18, 2018 on the Tenants’ door. The Notice is deemed received April 21st and the Tenants applied for dispute resolution on April 23rd, within the required time limits. The reasons given under the Notice were as follows:

- unreasonable number of occupants,
- Landlord property at risk, and
- that the Tenant assigned or sublet the rental unit without Landlord consent.

The effective date of the Notice was May 27th, corrected automatically to May 30th, 2018 as per the legislation.

The Tenant does not want to move out of the premises, although she has expressed a concern that she may have difficulty meeting the financial obligations now that her roommate is moving out. She states that she often travels for work for periods of time, and that she requires a reliable roommate in order to cover the costs and maintain the premises.

Analysis

A landlord may end a tenancy with one month’s written notice for cause under section 47 of the Act, which states in part:

“Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:...*

*(c) there are an **unreasonable number of occupants** in a rental unit;*

(d) the tenant or a person permitted on the residential property by the tenant has

*(iii) put the **landlord's property at significant risk**;...*

*(3) (i) the tenant purports to **assign the tenancy agreement or sublet the rental unit** without first obtaining the landlord's*

written consent as required by section 34 [assignment and subletting]; [bolding added]

I find that the Notice to End Tenancy was in proper form and served correctly; the Tenant disputed the notice within the required time period and so I turn my attention to the validity of the Notice and the reasons given to end the tenancy. The Landlord has the burden of proving that the grounds are justified in accordance with the requirements under the Act.

Unreasonable Number of Occupants:

The Landlord argued at length about his insurance requirement to ensure that no more than two non-related parties occupy the residence at once. The addition of the third person at the end of March, in his view, operates as a significant risk to him as he suggests that his coverage will be nullified; the Tenant argues that there was no evidence from the insurer that they will refuse to provide coverage with a guest visiting and that her roommate and CS are related in any event.

I find that the Tenant is not a party to the insurance policy nor is she under any obligation to adhere to the specific terms of that policy between the owner and the insurer, aside from any conditions stipulated in the tenancy agreement; I find that she is only governed by the tenancy agreement, the Act and regulations for the rent and use of the rental unit.

In support of his argument that the insurance policy is of relevance, the Landlord provided a copy of the "Regulations" to the tenancy agreement, which states in paragraph 10 that the Tenant shall adhere to the strata bylaws. Further, in paragraph 20, it states that *"No tenants or occupants are to reside in the suite without prior written consent of the landlord and confirmation by the landlord's insurance carrier. It is a fundamental breach of this tenancy agreement if the tenant permits any occupants not listed on the current Form K filed with the Strata Council to occupy the premises without prior written consent from the landlord."*

The Tenant has signed off on these Regulations which form part of the tenancy agreement between the parties. However, this particular requirement does not speak to whether or not the *number* of occupants is "reasonable"; it is merely a reference to the Landlord's insurance to cover the listed occupants, for a policy that was not produced into evidence. The Landlord did not give notice to the Tenant to vacate the premises for

“breach of a material term” of the tenancy agreement; accordingly, I cannot give weight to this evidence as it does not address what is a “reasonable number of occupants”.

Under the terms of the signed tenancy agreement, the standard occupancy provision in paragraph 11 states that:

- 1) *“The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.*
- 2) *The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.*
- 3) *If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved through dispute resolution under the Residential Tenancy Act.”*

The Tenant testified that this rental unit has two bedrooms plus a large den. She states that she is frequently away for work, which left only a roommate occupying the residence. She also states that the third person who was staying in the suite was merely a temporary guest, the stepsister of the roommate and a known friend of hers. It is her position that having two residents and a guest is not an unreasonable number of occupants.

In addition to the tenancy agreement, the Tenant has signed Form K which requires her to review the strata bylaws, which she has agreed to abide by. The Strata Bylaws were submitted into evidence and contain a provision concerning the number of occupants authorized for a unit. Section 3(7)(e) of the bylaws allow up to 5 adults to occupy a two bedroom plus den suite in the building. The Tenant argues that she was within the authorized limit for number of occupants at all times.

In order to end a tenancy, the grounds must be proven and the issue must be a significant concern. I find that given the size and number of bedrooms, having three people occupy the premises is not “unreasonable” by any means. The additional amount of water and power used, the coming and going of traffic and noise levels are not significant enough to warrant an end to the tenancy simply because three individuals are staying at the premises. As for the complaints of noise from the strata, there is no indication on the One Month Notice that this is the reason for the termination of the tenancy and therefore, I give that evidence no consideration in this Application. The Landlord has failed to satisfy me that the number of occupants is unreasonable as it pertains to the tenancy agreement, strata bylaws and the Act.

Landlord Property At Risk:

The Landlord takes the position that his rental unit is at serious risk due to potential voiding of his insurance coverage with the addition of the third occupant, who he claims was to become a permanent third unrelated resident. The Tenant argues that this is only the Landlord's perception and that it is not based on factual evidence. I have seen no direct evidence that this Tenant has intended to place this property at risk or that there is any damage being done to the unit. There has been no insurance claim that has been denied and no issues in that regard. The Landlord has not proven to me that this third person is anything more than a guest or that she is unrelated to the roommate. Even if this person is unrelated, I do not find that having a known person as a guest or temporary occupant is, in and of itself, putting the property at risk or sufficient justification to end a tenancy. In any event, the Tenant has testified that her roommate has given notice to move out, leaving only the Tenant in the unit. The issue appears to be moot at this point in time.

The Landlord was aware at the outset of this tenancy that this Tenant would require roommates to help cover the rent. This is not an unreasonable expectation in this housing market, where rent is exceedingly costly. I find that the Landlord has failed to provide sufficient evidence that the Tenant is placing the property at risk with her activities or by having a roommate to help share the costs.

Assigned or Sublet without Consent of Landlord:

This argument stems from the same facts regarding the arrival of the third person who claims to be the stepsister visiting from Alberta. When asked where there was any evidence of an assignment or sublet agreement, the Landlord admitted he had none but suggested that the Tenant may have such an agreement. The Tenant states that the third person was merely a guest who was staying temporarily while making plans to settle in BC. The Tenant still resides in the unit, although she is away for work much of the time.

Under Policy Guideline 19 of the Residential Tenancy Branch, an *assignment* is a permanent transfer of the tenant's rights to a third party, who becomes the new tenant of the original landlord. In this Application, the Tenant has not left the premises and has not assigned her tenancy to a new tenant. She remains the Tenant under the tenancy agreement with all obligations intact. For a "*sublet*", the original tenant transfers their rights to a subtenant. The original tenant remains the tenant of the original landlord,

and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes a “landlord” of the sub-tenant. I find that there is no evidence to suggest that this Tenant has created a sub-tenancy or that she has granted exclusive possession of the rental unit to a third party. She had simply taken a roommate to help with the costs.

I find that there is no evidence that the Tenant has assigned or sublet her rental unit to her roommate or CS, and that this ground must fail.

Order for Landlord to Comply:

The Tenant has requested an Order requiring the Landlord to comply with the tenancy agreement, Act and regulations. It is her position that the Landlord is not entitled to restrict her from having guests, and she asks for an Order requiring the Landlord to comply.

I find that by serving a Notice to End the Tenancy for the presence of a houseguest who had been staying two weeks at the premises, the Landlord has effectively breached paragraph 11 of the tenancy agreement which states that a landlord cannot impose restrictions on guests. The Tenant has testified that CS was a known friend and a stepsister of her roommate who was planning to relocate from Alberta; she had indicated that this person brought some belongings which included items owned by the roommate, when she arrived. This person paid for the use of the elevator and there is no evidence of a sub-let arrangement or fee being paid to stay at the residence, which was planned for a period of 20 days. As a result of the Landlord’s decision to post an eviction notice, the guest and roommate are moving out, which results in an additional financial burden for the Tenant.

I also note from the written evidence filed that the Tenant has asked the Landlord not to forward her personal information and emails to the strata without her consent, and the Landlord has stated in an email that he will not comply with her request; this could be a breach of privacy provisions and the Landlord is cautioned that he must respect the rights of the Tenant and her privacy, or potentially risk a complaint through the Office of the Information and Privacy Commissioner (OIPC). Aside from the filing of the Form K and anything she provides to the strata, the Landlord is not entitled to share the Tenant’s personal information with third parties without her permission; also of concern is the fact that evidence shows the strata using video to monitor and share information about the Tenant. She is entitled to quiet use and enjoyment of the premises pursuant to the Act, and that right must be protected.

As the Landlord has failed to meet the burden of proving the reasons for the Notice, the One Month Notice to End Tenancy dated April 14, 2018 is hereby cancelled and is of no force or effect. As the Tenant was successful in her Application, she is awarded the filing fee of \$100.00.

Conclusion

I hereby cancel the One Month Notice to End Tenancy dated April 14, 2018 and the tenancy shall continue until terminated by either party with proper notice.

The Tenant shall deduct \$100.00 from future rent payable to cover the cost of her filing fee.

The Landlord is further Ordered to refrain from placing restrictions on the Tenant's right to have guests at the rental premises and shall refrain from distributing any of the Tenant's personal information or communications to third parties without her written consent.

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: June 5, 2018

Residential Tenancy Branch