



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover his filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenants served the landlord with the notice of hearing package via Canada Post Registered Mail on May 11, 2018. Both parties confirmed that the tenants served the landlord with the submitted documentary evidence in person on June 14, 2018. Both parties also confirmed that the landlord served the tenants with the submitted documentary evidence via Canada Post Registered Mail on June 20, 2018. The tenants argued that they were not properly served within the allowed time period with the landlord's evidence and that it should be excluded. However, the tenants stated that no issues have arisen with the landlord's documentary service and as such, I find that excluding the documentary evidence is not warranted as there are no issues arising that would prevent the tenants from responding to the submitted evidence. I accept the undisputed affirmed testimony of both parties and find that both have been sufficiently served as per section 90 of the Act.

At the outset, it was clarified with both parties that the landlord has failed to provide sufficient evidence to allow the agent, J.J. to act on his behalf. However, the tenants have both acknowledged that they understand that J.J. is an agent of the landlord and is acting on the landlord's behalf. As such, the hearing proceeded with no further issues and both parties represented.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 Month Notice?

Are the tenants entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2015 on a fixed term tenancy ending on July 31, 2016 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated July 24, 2015. The monthly began at \$3,000.00 payable on the 1st day of each month. A security deposit of \$1,500.00 was paid on July 24, 2015.

On May 1, 2018, the landlord served the tenant with the 1 Month Notice dated April 25, 2018. The 1 Month Notice sets out an effective end of tenancy date of May 31, 2018 and that it was being given as:

- the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The landlord claims that the tenants have sublet the rental premises without the written of the landlord.

The tenants dispute the landlord's claim stating that both written and verbal permission was given by the landlord to sublet the rental premises. The tenants stated that the landlord was notified that they could provide the landlord with a list of occupants. The tenants also refer to two emails (not readable) submitted in evidence that the landlord was "OK" with the downstairs tenant. The tenants read out the details of the email which stated that there were two issues with the condition of the tenancy and a request for the downstairs tenants' details. The tenants argued that as such, the landlord was notified and consented to the downstairs tenant subletting. The tenants also made reference to a second email regarding a request for the downstairs tenant vacate the premises as it was a breach of the tenancy agreement. The tenants referred to the 'shelter information' form stating that N.A. was not a tenant, although she accepted rent in exchange for her to reside in the downstairs. The tenants stated that the form was completed to allow N.A. to collect housing benefits from the ministry.

The landlord argued that the emails are clear in that they do not give permission to the tenant to "sublet", but I instead requests the downstairs tenant's details and the request for that person to vacate the premises. The landlord reiterated that at no time has a request from the tenants to 'sublet' the premises been made to the landlord. The tenant, D.M. confirmed that no such request has ever been made.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, I accept the undisputed evidence of both parties that the tenants were properly served with the 1 Month Notice dated April 25, 2018 via Canada Post Registered Mail on April 25, 2018.

I also accept the undisputed evidence of both parties that the tenants have never requested permission to 'sublet' the premises. The landlord provided a copy of a shelter information form the downstairs tenant, N.A. which confirmed that the tenant, D.M. was accepting rent from this person to occupy the downstairs area. Although the tenant, D.M. argued that filling out this form

did not constitute a tenancy agreement, it is. It was acknowledged that although a written tenancy agreement was not completed between the parties, the tenant, D.M. confirmed that she accepted rent from this person and two of her children in exchange to allow them to reside in the rental premises. There are no other persons listed as occupants in the premises.

I find that a sublet has occurred in which the tenants fail to obtain the written permission of the landlord. As such, the tenants' application to cancel the 1 Month Notice is dismissed. The 1 Month Notice dated April 25, 2018 is upheld. The landlord is granted an order of possession.

Conclusion

The tenant's application is dismissed. The tenancy is at an end.
The landlord is granted an order of possession.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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 29, 2018

Residential Tenancy Branch