



Dispute Resolution Services

Page: 1

Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding SCHOOL DISTRICT NO.70 (ALBERNI)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act*, (the “*Act*”), to cancel One Month Notice to End Tenancy for Cause, (the “*Notice*”) issued on June 15, 2018 and to recover the filing fee paid for their application. The matter was set for a conference call.

Both the Landlord and Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Should the One Month Notice to End Tenancy for Cause, issued on June 15, 2018, be cancelled?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the *Act*?
- Are the Tenants entitled to recover the cost of their filing fee?

Background and Evidence

Both parties agreed that the tenancy began on January 1, 2015, as a month to month tenancy. Rent in the amount of \$500.00 is to be paid by the first day of each month and at the outset of the tenancy, the

Tenants paid a \$250.00 security deposit. The Tenants provided a copy of the tenancy agreement into documentary evidence.

The testimony of both parties is that the Landlord served the Tenants with the Notice on June 15, 2018, to end the tenancy. The Tenants provided a copy of the Notice into documentary evidence. The notice indicated that the Tenancy would end on July 31, 2018. The reason checked off by the Agent within the 1 Month Notice was as follows:

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

Both parties testified that one of the Tenants still lives in the rental unit and has allowed a roommate to move in.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 34(1) of the Act states that a tenant must not assign a tenancy agreement or sublet the rental unit without the written consent of the landlord.

Residential Tenancy Policy Guideline 19: Assignment and Sublet provide guidance on the conditions in which a tenancy would be considered a sublet under the Act.

"When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a sub-tenant. This must be for a period shorter than the term of the original tenant's tenancy agreement and the sub-tenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. 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 the "landlord" of the sub-tenant. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement."

"The use of the word 'sublet' can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement."

I accept the testimony of both parties that one of the Tenants still lives in the rental unit and has allowed a roommate to move into the spare bedroom. Based on the definition above, I find that the Tenants' arrangements with the roommate does not meet the meaning of the term sublet under the *Act*.

I find that the Landlord has not proven cause to terminate the tenancy for the reasons given on the Notice.

Therefore, I find the Notice dated June 15, 2018, of no effect, and the tenancy continues until it is ended in accordance with the *Act*.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application, I find that the Tenants may deduct the \$100.00 fee for this application from the next month's rent.

Conclusion

I grant the Tenants' application, and I find the Notice dated June 15, 2018, of no effect under the *Act*.

This decision is made on the authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 15, 2018

Residential Tenancy Branch