Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANCHO MANAGEMENT SERVICES BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

On July 9, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing and T.L. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord with the Notice of Hearing package by hand at the Landlord's office on July 12, 2018 and the Landlord confirmed that the Notice of Hearing package was received. Based on the undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

The Tenant advised that he served the Landlord his evidence in person on August 28, 2018 and T.L. confirmed that he received this evidence, that he reviewed it, and that he was prepared to respond to it. While this evidence would be considered late as per Rule 3.14 of the Rules of Procedure, as T.L. had reviewed the evidence and was prepared to respond to it, I was satisfied that it was not prejudicial to accept this evidence and proceed with the hearing.

T.L. advised that he served his evidence to the Tenant by registered mail on August 31, 2018. The Tenant stated that he did not receive this evidence yet. As the Landlord's evidence was not served in compliance with Rule 3.15 of the Rules of Procedure, this evidence was excluded and not considered when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

All parties agreed that the tenancy started on December 6, 2016 and that rent was currently $2,250.00 per month, due on the first day of each month. A security deposit of $1,125.00 was also paid.

All parties agreed that the Notice was served to the Tenant by registered mail on July 3, 2018 and the Tenant confirmed that he received the Notice. The reasons the Landlord served the Notice are because the Tenant "Breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so" and that the "Tenant has assigned or sublet the rental unit/site without landlord's written consent." The Landlord also wrote in the effective vacancy date of the Notice as September 1, 2018.

T.L. advised that a routine fire inspection was conducted on the rental unit and it was discovered that the Tenant partitioned the rental unit by adding a wall and a separate door, creating extra, separate bedrooms within the rental unit. He submitted that partitioning existing units and increasing the number of bedrooms in a unit is in

contravention of strata bylaws. He stated that the Tenant has multiple properties that he rents out in the same complex, that he is not living in any of the rental units, that he partitions all his rentals in the same manner, and that he re-rents these rental units to students illegally. In addition, he noted that the Tenant signed a Form K, that he was provided with a copy of the strata bylaws, and that these actions are in violation of the strata bylaws, especially due to the fact that the people he re-rented to are not listed on the Form K. He also submitted that the partitioning of the rental unit is done in such a manner that the makeshift walls impede the ability of the fire sprinklers to effectively function should there be an emergency.

T.L. submitted that from the observations of this conduct and of the people that enter and exit these rental units, it is suspected that the Tenant is re-renting the rental unit and taking advantage of students or visitors staying for short terms that do not know their rights. T.L. noted that an email of May 17, 2018 was sent by the building management to the Tenant advising him that these issues needed to be corrected; however, the Tenant did not admit guilt to these allegations, he did not comply with the email, nor did he make any moves to correct the problems.

The Tenant denied creating additional bedrooms in the rental unit and stated that the occupants are employees of the corporation that is also listed on the tenancy agreement. He advised that these occupants are software workers who live and work in the rental units and explained that the partitions are actually an Ikea wardrobe that the occupants move behind them to create a backdrop when they are conducting video conferencing. He stated that the wardrobes are only in place for a couple of hours and are not permanent fixtures as they get moved after the video conferences, but it is necessary due to the layout of the rental units. He acknowledged that he received a letter from the strata advising him of the alleged contraventions and that he received the above email warning of the violations of the strata bylaws.

T.L. submitted that if this explanation is in fact true and the layout of all the rental units require that his “employees” move a wardrobe behind them every time they have to conduct a video conference, he questioned why the Tenant would rent these units if they were not conducive to his business. The Tenant replied that he rented these units, despite the layout, because the rent was affordable.

Analysis

In considering this matter, I have reviewed the Landlord’s Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52

of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

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:*
>
> > *(h) the tenant*
> > *(i) has failed to comply with a material term, and*
> > *(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;*

When reviewing the totality of the evidence before me, the undisputed evidence is that the Tenant acknowledged that he was advised in May 2018 that his actions were in contravention of the strata bylaws. While he refutes that he has partitioned the rental unit and constructed walls to create separate bedrooms within the rental unit, I do not find his explanations to be reasonable or plausible, for the following reasons:

- The Tenant advised that in multiple rental units, he supplies the wardrobe for his “employees”, and they move this wardrobe back and forth for video conferences. I do not find it reasonable that these “employees” would find it practical, sensible, or realistic to constantly move a wardrobe back and forth every time they had to conduct a video conference call.
- Despite the Tenant’s assertion that the wardrobe was light, I still find this suggested scenario to be dubious at best.
- From his testimony, I can reasonably infer that his “employees” were to move the wardrobe to create a more aesthetically pleasing backdrop. However, it is not clear to me how a wardrobe would achieve this goal or give the appearance of being professional.

Based on the above points, I do not find that the Tenant has portrayed a scenario that is plausible or credible, especially given that this allegedly happens in multiple units. I find his explanations to be illogical, questionable, and highly unlikely. Furthermore, at the end of the hearing, the prospect of a settlement was proposed and the Tenant readily advised that he would be amenable to an Order of Possession past September 30,

2018 as it was difficult to find available rental units in the current rental housing market. This further causes me to be persuaded that the Tenant was aware that his actions were detrimental to his tenancy and he was seeking more time to vacate the rental unit. In addition, due to the lack of credibility I find from the Tenant's testimony, I am doubtful that the people living in the rental unit are likely "employees" but are more likely than not people that he re-rents to illegally.

The undisputed evidence before me is that the Tenant had been warned that his actions violated the strata bylaws, and there is no evidence before me that the Tenant has corrected this issue. Ultimately, I am satisfied that the Tenant's behaviour jeopardized the tenancy, and this provides a basis and justification for the Landlord ending this tenancy. As such, I dismiss the Tenant's Application, I uphold the Notice, and I find that the Landlord is entitled to an Order of Possession. As the Tenant has paid rent for September 2018, I exercise my authority pursuant to Section 55 of the *Act* to extend the effective date of the Notice. Consequently, the Order of Possession takes effect at **1:00 PM on September 30, 2018**, pursuant to Sections 52 and 55 of the *Act*.

As the Tenant was unsuccessful in this application, I find that the Tenant is not entitled to recover the $100.00 filing fee paid for this application.

Conclusion

I dismiss the Tenant's Application and uphold the Notice. I grant an Order of Possession to the Landlord effective at **1:00 PM on September 30, 2018 after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: September 10, 2018

Residential Tenancy Branch