



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRITESITE PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, OLC

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and for an Order requirement the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement.

The Tenant stated that on October 09, 2018 she placed the Application for Dispute Resolution, the Notice of Hearing, and evidence she submitted to the Residential Tenancy Branch on October 05, 2018 in the Property Manager's mail box. The Property Manager acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On November 05, 2018 the Landlord submitted 30 pages of evidence to the Residential Tenancy Branch. The Property Manager stated that this evidence was personally served to the Tenant on November 07, 2018. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On November 15, 2018 the Tenant submitted an Amendment to an Application for Dispute Resolution and a written submission to the Residential Tenancy Branch. She stated that she does not believe she served these documents to the Landlord. The Property Manager stated that these documents were not received by the Landlord. As these documents were not served to the Landlord, they have not been accepted as evidence for these proceedings and the Application for Dispute Resolution is not amended.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the documents that have been accepted as evidence have been reviewed, but they are only referenced in this written decision if they are directly relevant to my decision.

Preliminary Matter #1

At the outset of the hearing the Tenant applied for an adjournment to provide her with more time to submit additional evidence. The Property Manager opposed the request for an adjournment, in part, because he believes both parties have had ample time to submit evidence in regards to these proceedings.

I agree with the Landlord's submission that the Tenant has had sufficient time to submit evidence for these proceedings. The Tenant filed this Application for Dispute Resolution on October 10, 2018 and had, in my view, ample time to submit evidence prior to November 19, 2018. The request for an adjournment on this basis was denied.

At the outset of the hearing the Tenant also applied for an adjournment because she was feeling ill and needed to use the washroom. The Property Manager opposed the request for an adjournment, in part, because the Landlord is concerned for the safety of other occupants of the residential complex, he wants the tenancy to end as soon as possible, and, as such, he does not want to delay these proceedings.

Given that these proceedings relate to a Notice to End Tenancy I find that an adjournment would delay these proceedings and potentially extend this tenancy by approximately 6 weeks, which I find to be unfair to the Landlord, who wishes to end this tenancy as early as possible. The Tenant was advised that the hearing would not be adjourned and that she would be provided with time to use the washroom whenever that was necessary.

The Tenant left the hearing at 9:42 a.m. for the purposes of using the washroom, which was approximately 12 minutes after the scheduled start time of the hearing. The Tenant returned to the hearing at 9:43 a.m. and did not indicate a need to use the washroom after that time.

At approximately 9:50 a.m. the Tenant stated that she is using a neighbour's telephone and that the neighbour has informed her that she needs to return the telephone. As such, she requested an adjournment. The Tenant was advised that she had an obligation to ensure that she was able to participate in this teleconference hearing by ensuring she had reasonable access to a telephone and that the hearing would continue in her absence if she exited the teleconference. She indicated she would remain in the teleconference but asked that the proceedings be concluded as quickly as possible.

At approximately 9:55 a.m. the Tenant declared that she had to return the telephone to her neighbour and she exited the teleconference without providing me with an opportunity to respond.

This hearing proceeded in the absence of the Tenant because I find that she failed to make a reasonable effort to ensure she was able to participate in this teleconference. In the event that the Tenant did not have access to her own telephone, I find that she could have borrowed a

telephone from someone who was willing to loan it to her for a reasonable amount of time; she could have used a payphone; or she could have attended a provincial government office that was able to provide her with access to a telephone.

Preliminary Matter #2

The Tenant exited the teleconference prior to providing evidence in support of her application for an Order requiring the Landlord to comply with the Act. I therefore find that she has abandoned that portion of her application and it was not considered at these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Act*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on March 01, 2018; the Tenant is still living in the rental unit; and the rent is due by the first day of each month.

The Property Manager stated that on September 28, 2018 he personally served the Tenant with a One Month Notice to End Tenancy, which declared that she must vacate the rental unit by October 31, 2018. He stated that he served this Notice to her in the lobby of the rental unit, at which time she signed a Proof of Service to acknowledge receipt of the Notice to End Tenancy.

The Tenant stated that she met the Property Manager in the lobby of the rental unit on September 28, 2018; she signed an unknown document on that date; and the Property Manager did not serve her with a copy of a One Month Notice to End Tenancy. On October 05, 2018 the Tenant filed an Application for Dispute Resolution in which she applied to cancel the Landlord's Notice to End Tenancy. She stated she filed this Application because the Property Manager told her he was serving her with a Notice to End Tenancy. She stated that she did not receive this Notice to End Tenancy until the Landlord served her with evidence for these proceedings.

The Landlord submitted a surveillance camera image, dated September 28, 2018. The Property Manager stated that this image recorded him serving the Tenant with the Notice to End Tenancy, which the Tenant is holding in her hand in the image. The Tenant stated that she did not receive this image in her evidence package, although she spent no time reviewing her evidence prior to making this declaration.

The Landlord and the Tenant agree that the One Month Notice to End Tenancy for Cause declared that the tenancy was ending because the Tenant has allowed an unreasonable number of occupants in the unit.

The Property Manager stated that:

- two people who are not named on the tenancy agreement moved into the rental unit at the beginning of September;
- on September 24, 2018 the Tenant was informed, in writing, that these people must leave;

- he initially believed they left on September 30, 2018, however video surveillance indicates they come and go on a daily basis;
- two people who are not named on the tenancy agreement moved into the rental unit on October 27, 2018;
- he believes the people who moved into the unit in October are still occupying the unit;
- this is a one bedroom unit that is 611 square feet in size;
- the unit is too small to be shared by 3 adults.

The Tenant exited the teleconference before the merits of the Notice to End Tenancy were discussed. Prior to exiting the hearing, however, she declared that the people the Landlord is concerned about are no longer occupying the unit.

In the Tenant's written submission she acknowledges that:

- her step-sister/partner were staying with her in September of 2018;
- they were asked to leave, at the request of the Landlord;
- she occasionally allows a person or a couple to stay in her rental unit for short period if they are in need of shelter; and
- other relatives have stayed with her for short periods.

The Landlord submitted a copy of the tenancy agreement. The Property Manager referred to section 7 of the agreement, which permits the Tenant to have two guests for a maximum of two weeks.

Analysis

I favour the testimony of the Property Manager, who declared that the Tenant was personally served with a One Month Notice to End Tenancy on September 28, 2018, over the testimony of the Tenant, who declared that she signed an unknown document on September 28, 2018 and was not served with a One Month Notice to End Tenancy on that date.

In assessing the credibility of the parties I was guided by *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, in which the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In regards to service of the One Month Notice to End Tenancy I find the version of events provided by the Property Manager is simply more probable than the version of events provided by the Tenant. In these circumstances the Tenant acknowledges signing an unknown document on September 28, 2018. The Property Manager stated that she signed a Proof of Service on that date. The Landlord submitted a Proof Of Service that is signed by the Tenant to indicate that she received a copy of a One Month Notice to End Tenancy. I find it extremely unlikely that the Property Manager would make the effort to have the Tenant sign a Proof of Service, tell the Tenant she was being served with a Notice to End Tenancy, and then fail to

serve the One Month Notice to End Tenancy, as failing to serve the Notice to End Tenancy is not in the Landlord's best interest.

I favoured the Property Manager's testimony regarding service of the One Month Notice to End Tenancy, in large part, because it was corroborated by surveillance footage, dated September 28, 2018, in which the Tenant can be seen holding a document in her hand. I find that this footage corroborates the Property Manager's testimony that she was served with the Notice to End Tenancy when the parties met in the lobby on that date.

In adjudicating this matter I have relied on the aforementioned surveillance footage even though the Tenant contends she did not receive this document. Given that the Tenant acknowledged, when the hearing began, that she received 30 pages of evidence from the Landlord, I find it very self-serving for the Tenant to declare, later in the hearing, that she did not receive this one document. I find it more likely that the Tenant is denying receiving this document because it serves to establish that she was served with the One Month Notice to End Tenancy.

Section 47(1)(c) of the *Act* authorizes a landlord to end a tenancy if a tenant allows too many people to occupy a rental unit. The Landlord bears the burden of proving that there are grounds to end the tenancy pursuant to section 47(1)(c) of the *Act*.

On the basis of the undisputed evidence I find that the Tenant has, on several occasions, allowed one or two people to occupy the rental unit for extended periods of time. I find, however, that the Landlord has submitted insufficient evidence to show that having 3 people occupy a one bedroom unit is unreasonable. In the absence of evidence that establishes having one or two guests has caused damage to the unit or that it places an undue hardship on the Landlord, I simply cannot conclude that the Landlord has grounds to end this tenancy pursuant to section 47(1)(c) of the *Act*.

In adjudicating this matter I was influenced, to some degree, by clause 7 of the tenancy agreement, which permits the Tenant to have two guests for a maximum of two weeks. This clause supports my conclusion that having two people stay in the rental unit is not an unreasonable number.

As the Landlord has failed to establish grounds to end this tenancy pursuant to section 47(1)(c) of the *Act*, I grant the Tenant's application to set aside this One Month Notice to End Tenancy.

I note that this decision does not preclude the Landlord from ending the tenancy if, for example, the Tenant's guests are disturbing other occupants of the rental unit. I have not considered that matter at these proceedings because the Landlord did not give notice to the Tenant that the tenancy was ending on that basis.

I further note that I have not determined whether the Landlord has grounds to end this tenancy because the Tenant has breached clause 7 of the tenancy agreement. In the event the Landlord wishes to end the tenancy on the basis of that breach, the Landlord would have to give notice that the tenancy is ending pursuant to section 47(1)(h) of the *Act*.

Conclusion

The One Month Notice to End Tenancy is set aside. This tenancy shall continue until it is ended in accordance with the *Act*.

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: November 20, 2018

Residential Tenancy Branch