



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL AS OLC**

Introduction

This hearing dealt with an application by the tenant under the Residential Tenancy Act (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) under section 47;
- An order to allow an assignment or sublet of the unit when permission has been unreasonably denied under section 65; and
- An order directing the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62 of the *Act*.

SM, the mother and agent of the tenant, attended for the tenant (the “tenant”). The landlord attended. Both parties were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions. The landlord acknowledged receipt of the tenant’s Notice of Hearing and Application for Dispute Resolution. I find the landlord was served under section 89 of the *Act*.

Preliminary Issue # 1 – Service of Landlord’s Evidence Package

The landlord testified she filed an evidence package of 29 pages on November 16, 2018. The tenant was served with the materials when they were posted to the tenant’s door shortly thereafter, more than ten days before the hearing. The landlord could not recall the exact day. The tenant testified the unit had been sublet and the tenant was out of the country. The tenant acknowledged the landlord had posted the materials but that the tenant had not had an opportunity to review the evidence. The tenant acknowledged that no alternate address for service was provided to the landlord.

Rule 3.16 of the *Rules of Procedure* provides that the respondent must be prepared to demonstrate to the satisfaction of the Arbitrator that the applicant was served with their evidence as required by the *Act* and the *Rules*. Section 88 of the *Act* provides that the landlord’s evidence may be served on the tenant by attaching a copy to a door or other conspicuous place at the address at which the person resides. In consideration of the

landlord's affirmed testimony, I find the tenant was served with the landlord's evidence in accordance with section 88.

Preliminary Issue # 2 – Severance

Section 2.3 of the *Residential Tenancy Branch Rules of Procedure* (the "Rules") states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the following claims are not related to the tenant's application to cancel the One Month Notice and are therefore dismissed with leave to reapply:

- An order to allow an assignment or sublet of the unit when permission has been unreasonably denied under section 65; and
- An Order directing the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62 of the *Act*.

Preliminary Issue # 2 – Application by Tenant for Adjournment

The tenant requested an adjournment of the hearing. The tenant's agent SM testified that the tenant DM was out of the country and would be returning shortly. The landlord objected to the adjournment. The landlord testified that each week the unit was sublet, the landlord incurred strata fines of \$200.00. The landlord submitted evidence that fines for unauthorized subletting by the tenant were now more than \$3,500.00.

Residential Tenancy Branch, Rules of Procedure, Rule 6.4 sets out the criteria for granting an adjournment:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- (a) the oral or written submissions of the parties;*
- (b) whether the purpose for which the adjournment is sought will contribute to the objectives set out in Rule 1;*
- (c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;*
- (d) the degree to which the need for the adjournment arises out the intentional actions or neglect of the party seeking the adjournment; and*

(e) the possible prejudice to each party.

Although I considered all the criteria in Rule 6.4, I declined to adjourn the hearing. I found the tenant had ample notice of the hearing to arrange for evidence to be filed and to arrange for attendance; this was his own Application for Dispute Resolution filed on October 29, 2018. The tenant did not attest that additional evidence would be available or that any such evidence would be relevant to this matter or would aid in its determination. Finally, I find that rescheduling the hearing would unfairly prejudice the landlord who testified she wanted to proceed.

I informed the tenant at the hearing I would not adjourn the hearing and the hearing continued as scheduled.

I note that Section 55 of the *Residential Tenancy Act (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 Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") under section 47?

Background and Evidence

The landlord testified the parties entered into a written tenancy agreement "3-5 years ago". The tenancy was month-to-month for a unit governed by strata bylaws which prohibit subletting. Rent was \$1,395.00 a month payable on the first of the month. The landlord did not submit a copy of the agreement as evidence. At the beginning of the tenancy, the tenant provided a security deposit of \$697.50 which the landlord holds. The tenant has not provided the landlord with authorization to retain the security deposit.

The landlord testified that the tenant advertised and rented the unit on Air B&B from March to August 2017 without her permission and in violation of strata bylaws. The landlord also testified the tenant sublet the unit in a periodic tenancy on October 1, 2018 without her permission and in violation of strata bylaws; she submitted a copy of a tenancy agreement as evidence. The tenant acknowledged these statements were correct.

The landlord submitted a ledger from the strata council showing that the council has assessed fines against the landlord in an amount of \$3,560.00 for the tenant's subletting of the unit.

The landlord issued a One Month Notice stating as grounds that the tenant assigned or sublet the unit without the landlord's written consent. The effective date of the Notice was November 30, 2018. The landlord testified she placed the Notice on the tenant's door on October 19, 2018, thereby effecting service on October 22, 2018 pursuant to section 90 of the *Act*. A landlord submitted a copy of the Notice as evidence. The tenant acknowledged service of the Notice and filed an Application for Dispute Resolution on October 29, 2018.

The tenant testified as follows. The tenancy started 10 years ago. The tenant has been an exemplary tenant; it is unfair and unwarranted that the landlord seeks to end the tenancy. The landlord unreasonably ignored or refused the tenant's efforts to obtain the landlord's permission to sublet. The tenant was unaware that the strata levied weekly fines against the landlord for the tenant's unauthorized subletting.

Analysis

Section 47 of the *Act* provides that upon receipt of a One Month Notice, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the One Month Notice.

Pursuant to section 88 of the *Act* and based on the submissions of both parties, the tenant was served with the One Month Notice on October 22, 2018 and brought this application within the ten-day period.

The landlord must now show on a balance of probabilities, which is to say, it is more likely than not, the tenancy should end for the reasons identified in the One Month Notice. In the matter at hand, the landlord must demonstrate that the tenant has assigned or sublet the unit without the landlord's written consent.

Section 47(1) (i) of the *Act* provides that a landlord may end a tenancy by giving notice if the tenant assigns or sublets the unit without the landlord's consent. I find the
Considering the evidence and the testimony, including the acknowledgement of the

tenant that he has sublet without the approval of the landlord, I find on a balance of probabilities that the landlord has established the grounds for the issuance of the One Month Notice. I find that the tenant knew such subletting was in contravention of strata bylaws.

I therefore dismiss the tenant's request for an order setting aside the One Month Notice.

To be effective, the One Month Notice must comply with the provisions of section 52 of the *Act*. I find the One Month Notice complies with section 52.

Pursuant to section 55(1), the director **must** grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 and the tenant's application is dismissed. I determine the landlord's notice to end tenancy form complies with section 52. I have dismissed the tenant's application. I therefore find the landlord is entitled to an order of possession which is effective two days after service on the tenant.

Conclusion

I grant the landlord an order of possession which is effective two days after service on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be 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: December 04, 2018

Residential Tenancy Branch