



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

Introduction

This hearing dealt with the tenants' application under 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; and
- Authorization to recover the filing fee for the application from the landlord pursuant to section 72.

Both parties were represented at the hearing by their respective counsel who were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, ask questions and to call witnesses.

As both parties were in attendance, service of documents was confirmed. The parties testified that they had been served with the 1 Month Notice, the tenant's application for dispute resolution, and each other's evidentiary materials. Based on the testimonies I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an order of possession?

Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

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

The parties agree on the following facts. This fixed term tenancy began in December, 2017. The monthly rent is \$7,500.00 payable on the 1st of each month. The rental unit is a single detached home. The tenancy agreement allows the tenant to use the rental unit for short term accommodations. The addendum to the tenancy agreement says:

The landlord grants permission for sublets including short term sublets or short term accommodations (rentals under 30 days), so long as the upkeep and quality of care for the home is not compromised. Tenant shall comply with any and all laws, ordinances, rules and orders of any and all governmental or quasi-governmental authorities affecting the cleanliness, use, occupancy and preservation of the Premises.

The tenant used the rental suite for short term rentals. In 2018 the municipality enacted legislation requiring individuals offering short term rentals to obtain valid business licenses and permits.

On July 3, 2018 the landlord informed the tenant of the requirement to obtain a business license and permit. Despite the tenant's confirmation to the landlord that they would, "get a license number for you" the tenant has not obtained a proper license as at the date of the hearing, December 14, 2018.

The landlord received fines from the municipality for the unauthorized operation of short term rentals in the rental unit by the tenants. The landlord issued a letter to the tenants dated October 26, 2018 informing the tenants that they must comply with the municipal laws and obtain a valid license or cease operation of the short term rentals by October 29, 2018.

The tenants testified that they have not obtained the license from the municipality nor have they ceased operation of the short term rentals in the suite.

The landlord issued the 1 Month Notice dated October 31, 2018 indicating the reason for this tenancy to end as:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The tenants submit that there has been no breach of material terms, that the RTB does not have jurisdiction for properties that are occupied as vacation accommodation and that the municipality has exclusive jurisdiction regarding enforcement of municipal bylaws.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, 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 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant breached a material term of the tenancy agreement. Residential Tenancy Policy Guideline 8 defines a material term as term of an agreement that is so important that the most trivial breach of that term gives the other party the right to end the agreement. Whether a term in an agreement is material is determined by the facts and circumstances of the tenancy agreement. To end a tenancy for a breach of a material term the party alleging the breach must inform the other party in writing that there is problem believed to be a material breach, that the problem must be fixed by a reasonable deadline, and if the problem is not fixed the party will end the tenancy.

Both parties agree that the tenant operates a short term rental business in the rental unit. The tenancy agreement specifically allows the use of the rental property for such purposes. While the landlord has indicated that assignment and subletting is one of the reasons for this tenancy to end they gave little evidence on this issue. I do not find that there is sufficient evidence to end the tenancy on this ground.

The landlord testified that the material term which has been breached is that:

Tenant shall comply with any and all laws, ordinances, rules and orders of any and all governmental or quasi-governmental authorities affecting the cleanliness, use, occupancy and preservation of the Premises.

I find that the above term requiring compliance with the local laws to be a material term of this tenancy agreement. I accept the undisputed evidence of the parties that the term

was contained in the written addendum to the tenancy agreement signed by both parties. I accept the evidence that the tenant was permitted to operate short term rentals provided they comply with the local laws. I accept the evidence of the parties that the tenants have failed to obtain the permits and business license required by the municipality to operate short term rentals in the rental suite. I accept the evidence that there was ongoing correspondence between the parties from July 2018 regarding the requirement for a proper license. I further accept the landlord's evidence that the landlord issued a letter dated October 26, 2018 of the requirement for a license or to stop short term rentals by October 29, 2018.

I do not find the tenants' arguments to be persuasive. Much of the tenant's submission dealt with the use of the rental suite for short term accommodations. As I have found above that the tenant is authorized to use the suite for short term sublets I find it unnecessary consider these submissions that short term rentals do not constitute a breach of the agreement. The landlord does not submit that the act of short term rentals to be the material breach but rather doing so without the necessary permits and licenses required by law.

I do not find the tenants' submission that the RTB has no jurisdiction as the rental suites are vacation rentals to be supported in the evidence. The tenancy agreement is between the named tenants and the landlord. That tenancy agreement is for a period of approximately 3 years from December 2017 to March 2020. The agreement further states that the premises will be used as a private dwelling. The RTB may not have jurisdiction over a short term rental agreement entered by the tenants and a sub-tenant but I find that the relationship between the landlord and the tenants is a valid tenancy agreement as set out in the *Act*.

I do not find the tenants' submission that the municipality has exclusive jurisdiction regarding contravention of bylaws to be persuasive. The RTB is not issuing a decision on the merits of the municipal fines issued or penalties for contraventions of local bylaws. Furthermore, the nature or severity of any illegal act, while raised by the tenants, is not at issue. The 1 Month Notice does not seek to end the tenancy for illegal activity but for the breach of a material term.

I find that there was a material term contained in the addendum to the tenancy agreement signed by the parties requiring the tenants to comply with any and all laws, ordinances and rules of the governmental authorities. I find that the tenants were in contravention of this term as they operated short term rentals in the rental unit without the required licenses and permits. I find that the tenants were informed of this breach

by the landlord in writing on October 26, 2018. I find that the tenants did not amend their activities by either obtaining a license or by ceasing the unlicensed short term rentals within a reasonable timeframe. As such, I find that the landlord has met their evidentiary burden on a balance of probabilities that this tenancy should end for the reason stated on the 1 Month Notice. I find that the landlord has shown on a balance that there is cause to end this tenancy and dismiss the tenants' application.

The landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice also provides the reason for ending the tenancy.

As I have dismissed the tenants' application to dispute the 1 Month Notice, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed I issue an Order of Possession effective two (2) days after service.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant(s)**. Should the tenant(s) or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenants' application is dismissed without leave to reapply.

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 24, 2018

Residential Tenancy Branch