



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS, CNC, MNDCT, MNRT, OLC, RP, RR, FFT
OPC, FFL

Introduction

This teleconference hearing was scheduled in response to an application by both parties under the *Residential Tenancy Act* (the “Act”). The Tenant applied for permission to assign or sublet, to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), for monetary compensation, for compensation for emergency repairs, for an Order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* and/or tenancy agreement, for an order for the Landlord to complete regular repairs, and for a reduction in rent due to services, facilities or repairs agreed upon but not provided. The Landlord applied for an Order of Possession based on a One Month Notice. Both parties also applied for the recovery of the filing fee paid for the Application for Dispute Resolution.

The property owner and an agent (collectively, the “Landlord”) were present for the teleconference hearing, as was the Tenant. The parties each confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the other party’s evidence. Neither party brought up any concerns regarding service and therefore I find that both parties were duly served as required.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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

Preliminary Matters

As stated by rule 2.3 of the *Rules of Procedure*, claims on an Application for Dispute Resolution must be related to each other and unrelated claims may be dismissed. As such, due to the urgent matter of a notice to end tenancy, only the dispute over the One Month Notice will be addressed in this decision, along with both party's request for the recovery of the filing fee. I exercise my discretion to dismiss the remainder of the Tenant's claims, with leave to reapply. The parties were informed of this at the hearing.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should either party be awarded the recovery of the filing fee paid for their Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties agreed that the tenancy started approximately 10 years ago and that a security deposit and pet damage deposit of \$1,000.00 each were paid at the outset of the tenancy. Monthly rent in the amount of \$2,000.00 is due on the first day of each month and the rent was increased to \$2,050.00 as of February 1, 2019. A tenancy agreement signed with a previous property management company in September 2012 was submitted into evidence and confirms the monthly rent as stated by the parties. The tenancy agreement was for a fixed term set to end in 2013.

The Landlord testified that on December 17, 2018 they served the Tenant with a One Month Notice. They stated that they attempted to leave the notice on the door but gave it to an adult residing at the rental unit as the Tenant was not home. They also emailed the notice to the Tenant to confirm that he had received it. The One Month Notice, dated December 17, 2018 was submitted into evidence and states the following as the reason for ending the tenancy:

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

The effective end of tenancy date was stated as January 31, 2019.

The Landlord provided further testimony that the Tenant went out of town and sublet the rental unit without their permission through a vacation rental company. The Landlord provided the Tenant with a letter on December 1, 2018. The letter was submitted into evidence and informed the Tenant that the Landlord was aware of the subletting and states issues with insurance coverage. The letter noted that a One Month Notice would be served and that the sublease tenants must move out by December 28, 2018.

The Landlord stated that they received a request to conduct repairs on the property which led to them inquiring about who was living in the rental unit. The Landlord stated that they then discovered that the Tenant had hired a property management company to rent out the unit while he was away for a period of a few months. The Landlord also noted that the property manager was under the belief that the Tenant was the owner of the home. The Landlord stated that the sublease tenants moved out on December 27 or December 28, 2018. The Landlord submitted email communication with the property manager.

The Landlord testified that their insurance company clarified with them that the insurance was null and void during the period when other tenants were residing in the rental unit with no agreement with the Landlord. The Landlord provided further testimony that in May 2018 they spoke to the Tenant about the possibility of having a roommate move into the home, provided it was someone the Tenant knew, and arrangements were made directly between the roommate and the Landlord.

The Landlord stated that they did not hear from the Tenant further on this and they did not provide verbal or written permission for anyone to move in. They stated that they believe there were two occupants in the home from the vacation rental company, one short term and one that was on a month-to-month sublease arrangement until December 28, 2018.

The Landlord submitted into evidence documents received from the vacation rental company and the property manager regarding the arrangements for the rental of the unit. This also included the advertisement of the rental unit on the vacation rental website. The Landlord also submitted email communication with the Tenant dated from May 2018 to December 2018.

The Tenant stated that he made arrangements with a property manager while he was away to explore what options he might have for the home and for supplementing his

income. He stated that the first booking through the vacation rental company was not until after he was already out of town. He testified that he went away in September 2018 and returned at the beginning of January 2019.

The Tenant stated that he checked with his insurer and was of the belief that proper insurance was in place. He also stated that he offered to pay the insurance premium of the Landlord but that this offer was declined.

The Tenant stated that he thought he had taken appropriate precautions for renting out the home, such as having housekeepers and maintenance people in place to care for the property. He stated that there was an initial shorter-term rental and then a couple who rented the home for two or three months. The Tenant stated that these people were found through the vacation rental company for convenience but were on a monthly agreement.

The Tenant stated that the majority of communication with the Landlord throughout the tenancy was conducted verbally. He testified that he received verbal permission to rent out the rental unit and that he would not have done it had he not had verbal permission.

The Tenant submitted a written statement into evidence which included the following regarding the claims of subletting:

The sole reason given for eviction is my negligence around sub-letting. In the latter years of my or our tenancy, there has rarely been more than just verbal agreements or arrangements. Moreover, the owner (JG) verbally/long-distance...in the midst of this perceived sublet crisis...asked me to pay for "upgraded" insurance which I agreed to. He then apparently found this "inconvenient" and rescinded this simple remedial option. The entire property incidentally...in no way has been affected by its brief sub-let.

(Reproduced as written)

The Tenant confirmed receipt of the One Month Notice and submitted the email dated December 18, 2018 into evidence in which the notice was sent to him after it had been provided at the residential property as well.

The parties were offered the opportunity to settle the dispute but were not able to come to an agreement.

Analysis

Based on the testimony and evidence of both parties, I find as follows:

The One Month Notice, dated December 17, 2018 was served to the Tenant due to subletting without written consent, pursuant to Section 47(1)(i) of the *Act*. As stated in Section 47(4) of the *Act*, a tenant has 10 days in which to dispute the One Month Notice. As the Tenant filed the Application for Dispute Resolution on December 19, 2018 I find that he applied within the required timeframe. Therefore, the matter before me is whether the reasons for the One Month Notice are valid.

Section 34 of the Act states the following regarding assignment and subletting:

- 34 (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.
- (2) If a fixed term tenancy agreement has 6 months or more remaining in the term, the landlord must not unreasonably withhold the consent required under subsection (1).
- (3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

While the parties were not in agreement as to whether verbal permission was provided, I find that no *written* permission to sublet was provided by the Landlord. Neither party submitted any documentary evidence that would confirm that the Landlord provided permission in writing.

I also find it relevant to consider the definition of sublet. *Residential Tenancy Policy Guideline 19: Assignment and Sublet* states that in a sublease arrangement, the original tenant maintains an interest in the property and the sublease tenants have an agreement with the original tenant, not with the landlord.

As stated in Policy Guideline 19, a sublease agreement is for a term less than that of the tenant's agreement with the landlord. As the tenancy agreement submitted into evidence was for a fixed term agreement set to end in 2013, I find that this tenancy was continuing on a month-to-month basis.

The Tenant provided testimony that the tenants moved out on December 27 or 28, 2018 and that he returned to the rental unit in early January 2019. He also stated that although the tenants were found through a vacation rental company, this was for convenience and the tenants were on a month to month agreement for at least 2 months. Accordingly, I find that the sublease agreement was arranged on a month-to-month basis and ended on or around December 28, 2018.

As the Tenant continued to pay rent and continued in a month-to-month agreement with the Landlord, I find that he retained an interest in the rental unit and he entered into an agreement between himself and the new tenants, with a property manager acting as agent.

I accept the evidence before me that show the property manager's involvement and the documentary evidence submitted by the Landlord that establishes that the rental unit was advertised for rent. I also accept the evidence that establishes that there were tenants in the home during a period while the Tenant was away and that they did not have an agreement between themselves and the Landlord. As such, I find that this was a sublease arrangement.

The Tenant did not dispute that he sublet the rental unit, although he stated that he had verbal permission to do so. However, as stated, I find that the Tenant did not have written permission, which is a requirement stated under Section 34 of the *Act*. As such, I find that the Tenant was in breach of Section 34 of the *Act*. Therefore, I find that the reason for the One Month Notice dated December 17, 2018 is valid and the Tenant's application to cancel the notice is dismissed.

Pursuant to Section 55(1) of the *Act*, I find that the Landlord is entitled to an Order of Possession. Upon review of the One Month Notice, I find the form and content to be in compliance with Section 52 of the *Act*. Therefore, I issue an Order of Possession to the Landlord, effective February 28, 2019 at 1:00 pm.

As the Tenant was not successful with his application to cancel the One Month Notice I decline to award the recovery of the filing fee. As the Landlord was successful in their application for an Order of Possession, I award the Landlord the recovery of the filing fee in the amount of \$100.00, pursuant to section 72 of the *Act*. The Landlord may retain \$100.00 from the security deposit at the end of the tenancy.

Conclusion

The Tenant's application to cancel the One Month Notice is dismissed, without leave to reapply.

I grant an Order of Possession to the Landlord effective **on February 28, 2019 at 1:00 pm**. This order must be served 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.

Pursuant to Section 72, the Landlord may retain \$100.00 from the security deposit to recover the filing fee paid for their application.

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: February 05, 2019

Residential Tenancy Branch