Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASIA PACIFIC INVESTORS LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC CNR

Introduction

This hearing dealt with the tenant's application pursuant to 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
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

The landlord's agent, MD, ('landlord') testified on behalf of the landlord in this hearing, and was given full authority by the landlord to do so. The tenant's agent, WG, ('tenant') testified on behalf of the tenant in this hearing, and was given full authority by the landlord to do so. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

The landlord's agent indicated in the hearing that they were withdrawing the 10 Day Notice dated February 5, 2019 as the tenant paid the outstanding rent. Accordingly, the 1 Day Notice dated February 5, 2019 is cancelled, and the tenant's application regarding the 1 Day Notice is cancelled.

The tenant acknowledged receipt of the 1 Month Notice to End Tenancy for Cause, dated December 27, 2018, which was personally served on the same date. Accordingly,

I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled?
If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This month-to-month tenancy began on November 15, 2017, with monthly rent currently set at $670.00, payable on the first of each month. The landlord collected, and still holds, a security deposit in the amount of $335.00. The tenant currently still resides at the rental address.

The landlord served the notice to end tenancy providing the following grounds:

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

Both parties confirmed in the hearing that the tenant still resides there, and has not sublet the rental unit.

The main reason for why the landlord had issued the 1 Month Notice was because the tenant has allowed her boyfriend, WG, to reside at the rental unit without the landlord's prior consent. The landlord's agent testified that this was a material breach of the tenancy agreement as the tenant and her boyfriend has refused to submit a new application form providing the details of the new tenant. The landlord's agent testified that at the time of the hearing the tenant's boyfriend has yet to fill out an application despite warnings that failure to do so might result in an end of the tenancy.

The tenant does not dispute that WG does reside with her, but that this does not constitute a material breach of the tenancy agreement. The tenant testified that the 1 Month Notice was issued to her because she refuses to pay the additional $50.00 in rent requested by the landlord. The tenant disputes the fact that she had refused to sign a new application.

Analysis

Section 47(1) of the *Act* allows a landlord to end a tenancy for cause for any of the reasons cited in the landlord's 1 Month Notice.

A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. As noted in RTB Policy Guideline #8, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the Agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

> *To end a tenancy agreement for breach of a material term the party alleging a breach…must inform the other party in writing:*
> - *that there is a problem;*
> - *that they believe the problem is a breach of a material term of the tenancy agreement;*
> - *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
> - *that if the problem is not fixed by the deadline, the party will end the tenancy…*

In regards to the landlord's allegation that there has been a breach of a material term of the tenancy agreement, I find that it is undisputed that the tenant had allowed WG to reside with her. The tenant disputes that she had refused to submit a new application. The tenant also disputes the fact that her actions should be considered material breaches of the tenancy agreement.

Although the term "sublet" is used by the landlord in this dispute, I must note that RTB Policy Guideline #19 clearly provides the definition of a "sublet" which states:

> *"Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate…"*

By the above definition, this matter cannot considered a "sublet" situation, as the tenant still resides there.

This leaves the question of whether the tenant had breached the tenancy agreement by allowing an additional occupant other than the one listed on the tenancy agreement. Both parties in this hearing confirmed that the tenant had allowed WG to move in without prior consent of the landlord. In considering whether this action constituted a material breach of the tenancy agreement, I note the tenancy agreement submitted does not contain any addendums that specifically state that any additional occupants other than the ones listed on the tenancy agreement are prohibited, or that the tenant is required to submit a new rental application, or that the tenant is required to sign a new tenancy agreement. The only portion of the tenancy agreement that addresses the issue of additional occupants is the standard term on the form in condition 11(3) that states "if the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved through dispute resolution under the Residential Tenancy Act". The landlord did not select the following reason for ending the tenancy on the 1 Month Notice: *Tenant has allowed an unreasonable number of occupants in the unit/site.*

I find that the landlord has not established that the tenant has breached a material term of the Agreement, and I am not satisfied that this tenancy should end on that basis. I am also not satisfied that the landlord has demonstrated that the tenant has sublet the rental unit by definition under the *Act*. Accordingly, I allow the tenant's application to cancel the 1 Month Notice. The tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

Conclusion

I allow the tenant's application to cancel the landlord's 1 Month Notice to End the Tenancy. The 1 Month Notice dated December 27, 2018 is cancelled, and is of no

continuing force, with the effect that this tenancy continues until ended in accordance with the *Act*.

The landlord cancelled the 10 Day Notice for Unpaid rent dated February 5, 2019 as the tenant paid the outstanding rent.

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 11, 2019

Residential Tenancy Branch