



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOMES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AS, CNC, ERP, FFT, MNDCT, OLC

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;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to have the landlord conduct emergency repairs to the rental unit pursuant to section 33;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

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. Both parties confirmed that they had exchanged their documentary evidence.

Issues to be Decided

Should the notice to end tenancy be cancelled? If not, should the landlord be granted an order of possession?

Should the landlord be compelled to conduct emergency repairs as required?

Should the tenant be granted an order compelling the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to a monetary order for compensation for loss or damage under the Act, regulation or tenancy agreement?

Is the tenant entitled to an order allowing him to sublet his unit?

Is the tenant entitled to the recovery of the filing fee for this application from the landlord?

Background and Evidence

The landlords' agent gave the following testimony. The agent testified that the tenancy is a long standing one that began in July 2003. The agent testified that on January 21, 2019 a One Month Notice to End Tenancy for Cause with an effective date of February 28, 2019 was issued to the tenant for the following reasons:

Tenant or a person permitted on the property by the tenant has:

seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The agent testified that the tenant has sublet his unit to four or non-related individuals at any given time, has built an illegal suite in the home, has installed a wood burning stove, uses a hot plate, and all of these items have been done without the permission or knowledge of the landlord. The agent submits that as a result of these issues, the landlord is unable to be insured by his insurance company; and as a result, the tenant has breached a material term of their tenancy agreement by acting in a manner that has left the landlord/owner uninsurable. The agent submits that the tenant has not corrected his behaviour and wants to continue running a rooming house. The agent requests an order of possession.

The tenant testified that he had the verbal authorization of the landlord since 2008 to build a suite and to essentially rent out rooms so that it would be beneficial to the landlord and the tenant. The tenant testified that it's not been an issue until the new property management company took over. The tenant testified that he should be entitled to \$2000.00 for damages as a result of their actions in seeking to end his tenancy and the loss of revenue incurred. The tenant testified that he is willing to work with the landlord to come a solution that is beneficial to all parties.

Analysis

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

When a landlord issues a notice under section 47 of the Act, they bear the responsibility of providing sufficient evidence to support the issuance of the notice. In the matter before me, the tenant does not dispute that he has not obtained written permission to alter the unit or to take on several occupants. The tenant was unapologetic during the hearing and made it clear that he felt it was his right to use the space as he sought fit based on the landlords' verbal approval from 2008.

I find that the tenant has acted in a clear and deliberate manner and has flagrantly disregarded verbal and written warnings from the agent. In addition, the signed tenancy agreement clearly outlines the limitations that no more than two non-related individuals may reside on the property, if so; the landlord is not entitled to insurance. To end a tenancy, I need only find merit on one of the grounds; however, in this case I find that the landlord has provided sufficient evidence that the tenant has done the following:

seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

by having too many occupants in the unit and building an illegal suite and using a hot plate which in turn has negated the landlords' ability to be insured.

Based on the testimony and documentation before me, and on a balance of probabilities, I find that the landlord has provided sufficient evidence to show that the tenancy must end for the reasons noted above.

Section 55(1) of the *Act* reads as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the One Month Notice complies with section 52 of the *Act*. The landlord is granted an order of possession pursuant to section 55 of the *Act*.

In terms of the tenants' monetary claim, I find that the issues he has had to deal with were as a result of his own actions that were not in accordance with the Act, regulation or tenancy agreement. Furthermore, the tenant did not provide sufficient evidence to support the amount sought, or how it was a result of the landlord being reckless or negligent. Based on the insufficient evidence before me, I dismiss this portion of his application. The tenant has not been successful in their application.

Conclusion

The One Month Notice to End Tenancy for Cause dated January 21, 2019 with an effective date of February 28, 2019 is confirmed, it is of full effect and force. The landlord is granted an order of possession.

The tenants' application is dismissed in its entirety 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: February 28, 2019

Residential Tenancy Branch