



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, FFT, FFL

Introduction

This hearing dealt with a tenant's request to cancel a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") and a landlord's application for an Order of Possession based on the 1 Month Notice. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Both parties had included a request for monetary compensation from the other in making their respective Applications, as amended; however, I determined the primary issue to resolve was whether the 1 Month Notice should be upheld or cancelled and I severed the monetary claims from the Applications before me pursuant to the authority afforded me under Rule 2.3 of the Rules of Procedure. The parties are at liberty to file another Application for dispute Resolution if they intend to pursue a monetary claim against the other party.

The hearing was held over two dates and an Interim Decision was issued on February 19, 2019. The Interim Decision should be read in conjunction with this decision. As reflected in the Interim Decision I had recorded a discrepancy in the number of evidence packages the landlord sent to the tenant versus the number of packages received by the tenant. At the start of the reconvened hearing, the landlord wished to correct the record to reflect that she had only sent three packages to the tenant for this proceeding which was the same number of packages the tenant had acknowledged receiving. Accordingly, I determined it more likely than not that the tenant was in possession of all of the landlord's documents and evidence that had been submitted for this proceeding.

Both parties had indicated a willingness to try to find a way to resolve this matter by way of a mutual agreement. The parties were given an opportunity to explore that possibility but they were ultimately unsuccessful in reaching a mutual agreement. Accordingly, it is

before me to make a determination as to the fate of this tenancy based on the subject 1 Month Notice.

It is important to note that in this case I heard hours of oral testimony and submissions and I was provided a considerable amount of documentation, all of which I have considered in making this decision; however, with a view to brevity in writing this decision I have only summarized the parties' respective positions or referred to the most relevant evidence.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

The tenant and the landlord's property manager at the time entered into a written tenancy agreement for a periodic tenancy set to commence on January 15, 2016. The tenant paid a security deposit of \$747.50 and the rent was set at \$1,495.00 payable on the first day of every month. Starting March 2017 the rent was increased to \$1,550.00 per month.

The rental unit is a six bedroom house and includes two kitchens, and a recreation room in addition to a living room. For most of the tenancy the rental unit was occupied by the tenant, her spouse and children; along with the tenant's sister and her family for a total of 10 occupants. The tenant's sister and family have recently moved out and leaving five occupants in the unit.

On December 24, 2018 the landlord issued the subject 1 Month Notice to End Tenancy for Cause with a stated effective date of February 1, 2019. The 1 Month Notice was sent to the tenant via registered mail on December 24, 2018 and delivered to the tenant in person on December 27, 2018. As explained in the Interim Decision, I determined the tenant filed to dispute the 1 Month Notice within the time limit permitted.

Below, I have reproduced the reasons the landlord indicated for ending the tenancy on the second page of the 1 Month Notice:

<input checked="" type="checkbox"/> Tenant is repeatedly late paying rent.
<input checked="" type="checkbox"/> Tenant has allowed an unreasonable number of occupants in the unit/site.
<input checked="" type="checkbox"/> Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
<input type="checkbox"/> significantly interfered with or unreasonably disturbed another occupant or the landlord.
<input checked="" type="checkbox"/> seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
<input checked="" type="checkbox"/> put the landlord's property at significant risk.
<input checked="" type="checkbox"/> Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
<input checked="" type="checkbox"/> damage the landlord's property.
<input type="checkbox"/> adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
<input checked="" type="checkbox"/> jeopardize a lawful right or interest of another occupant or the landlord.
<input checked="" type="checkbox"/> Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
<input type="checkbox"/> Tenant has not done required repairs of damage to the unit/site.
<input type="checkbox"/> Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
<input type="checkbox"/> Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.
<input type="checkbox"/> Rental unit/site must be vacated to comply with a government order.
<input type="checkbox"/> Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.
<input checked="" type="checkbox"/> Tenant has assigned or sublet the rental unit/site without landlord's written consent.
<input type="checkbox"/> Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.
<input type="checkbox"/> Tenant's rental unit/site is part of the tenant's employment as a caretaker, manager or superintendent of the property, the tenant's employment has ended and the landlord intends to rent or provide the rental unit/site to a new caretaker, manager or superintendent.
<input type="checkbox"/> Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.
DETAILS OF CAUSE(S): Include any dates, times, people or other information that says who, what, where and when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary (signed and numbered).
The tenant was using my home inside as a wood carving shed for Native carvings. This dust has gotten into ducts, electrical etc. A Hazard. They have removed wood since, but damage unknown. There is 8 unauthorized occupants living there. There is one name on Tenancy agreement. I have emails of chasing tenant for rent, and email from Tenant asking to be late in paying rent. The lower level occupant lives there without Landlord consent has damaged 1 bedroom carpet. Pest control called in due to sanitary conditions.

WHEN THE NOTICE IS CONSIDERED TO BE RECEIVED BY THE TENANT

Landlord's position

The landlord made submissions and presented evidence in support of ending the tenancy for the following reasons that she identified as being the primary reasons for ending the tenancy:

1. Damage and risk to property due to wood carving in rental unit

Based upon information the landlord received from her realtor when the property was listed for sale on October 26, 2018, the landlord submits that the wood carving was taking place in the rental unit, including the living room, kitchen and garage.

On November 1, 2018 the landlord instructed the tenant, in writing, to remove the wood carvings from the rental unit by November 6, 2018. The landlord was satisfied that the

tenant had complied with this demand; however, the landlord seeks to end the tenancy because she is of the position that the dust that resulted from the carving has caused a toxic health hazard and fire risk. The landlord stated that the wood dust has penetrated the electrical sockets and ducting that will require the rental unit to be remediated at great expense – over \$25,000.00.

The landlord pointed to an email from her realtor of January 16, 2019 whereby the realtor described seeing wood carving activity in the kitchen, living room and garage. The landlord did not call her realtor as a witness.

The landlord provided to written “summary and guestimate” from a restoration company dated November 23, 2018 indicating that wood dust is a toxic health and safety issue that will require the unit to be vacant to remediate based on what the landlord told the company. The author of the statement goes on to state that “a more specific quote would require a site visit, but under these circumstances, this will suffice.” The author did not elaborate on the “circumstances” he was referring to.

On January 22, 2019 the landlord sent another email to the restoration company and enquired as to remediation requirements for different types of wood. The restoration company response included the following statements: At this point I’d probably treat all of the different woods as “one in the same.” Especially since I haven’t seen a thing.”

The landlord did not call the restoration company representative who authored the above statements as a witness.

2. Extraordinary damage to carpeting

The landlord submitted that the carpeting has been significantly stained during the tenancy and that the landlord had to pay to have the carpeting professionally cleaned; however, the carpets remain stained especially in the hallways and bedrooms. In one bedroom are nail polish stains. The landlord also indicated that the pile of the carpeting is significantly worn out due to the number of occupants in the rental unit creating excessive wear and tear. The landlord stated the carpeting is approximately nine years old and that it should last 15 - 20 years because it is good quality carpeting. The landlord acknowledged there was some staining at the start of the tenancy but that the carpeting has become much more stained during the tenancy.

The landlord estimates that it will cost \$10,000.00 to replace the flooring in the rental unit.

The landlord claims that any additional money the tenant may have paid to the property manager to replace carpeting was not received by her.

3. Extraordinary damage to walls and ceiling

The landlord submitted that the walls are scratched and gouged and the ceiling has been damaged by a leak from the toilet on the upper floor. The landlord submitted that the toilet was cracked by the tenant or other occupants. The tenant paid to replace the toilet but damage to the ceiling below the toilet remains and requires repair.

The landlord submitted that the walls require repainting and estimates that repainting will cost approximately \$4,000.00. The landlord stated that the rental unit was painted shortly before the tenancy started, in 2015, and that she expects interior paint should last 5 – 10 years before repainting is necessary.

4. Unauthorized occupants

The landlord submitted that the only authorized occupants were the tenant and her sister but there were a total of 10 occupants living in the rental unit. The landlord pointed the tenancy agreement whereby only the tenant is named as a tenant and the addendum whereby it states that there will be no subletting or new roommates without the landlord's permission. The landlord had been informed by the property manager that the tenant's sister was also be residing in the rental unit. Included in the landlord's evidence was an email the property manager sent her on February 4, 2016 whereby the property manager states the tenant's sister lives in the basement area.

The landlord also referred to an email between the tenant and the property manager whereby the property manager confirmed that the tenant's sister was a permitted occupant but pointed out that there was no confirmation that the other occupants were authorized.

Tenant's position

The tenant provided the following responses and submissions concerning the landlord's reasons for ending the tenancy:

1. Wood carvings

The tenant submitted that her husband carved masks in the garage only and that on occasion he painted the masks in the house. The tenant maintained that there was no carving taking place in the house, only the garage. The tenant acknowledged that the garage is attached to the house.

The tenant submitted that the landlord's former property manager(s) performed inspections every six months during the tenancy and that at no time did the property manager take issue with the wood carvings. The last inspection by the property manager was done in September 2018 or October 2018 before the landlord took over management of the rental unit.

The tenant submitted that after the landlord demanded the tenant have the carvings removed from the rental unit by November 6, 2018 by way of the November 1, 2018 letter; that the tenant complied with the demand and the tenant considered the issue resolved.

The tenant submitted that the landlord has not set foot in the rental unit during the tenancy to inspect the rental unit, nor has the restoration company representative who prepared the written statements the landlord relies upon. The tenant described the persons who have been in the rental unit since the property manager was terminated as being the landlord's realtor(s), carpet cleaners, pest control contractor, flooring and plumbing contractors but not the landlord or the restoration company representative.

2. Carpets

The tenant submitted that the carpeting was stained and in fair or poor condition at the start of the tenancy as evidenced by the move-in inspection report. The tenant acknowledged that there was damage caused to the carpeting in one of the bedrooms during the tenancy but testified that \$500.00 was paid to the property manager to pay for the damage by way of \$50.00 instalments made between October 2017 and August

2018. Despite making payments for carpet damage, the carpet was not replaced. The tenant reviewed her banking records during the hearing and showed them to her advocate. The advocate confirmed that the tenant's banking records reflect debits of \$1,602.00 for payment of rent plus carpet damage for those months.

Although the landlord claims that she did not receive the monthly payments of \$50.00, the tenant emphasized that the payments were made to the property manager for the relevant period.

I note that included in the landlord's evidence package was an email from the landlord's property manager dated November 1, 2017 whereby the property manager includes the following statement: "They did give an extra \$50 this month to start paying or the [carpet] damage. I will transfer that to you with the rent."

3. Walls and ceiling

The tenant submitted that the walls were not in great condition at the start of the tenancy, as evidenced by the presence of a drywall patch being reflected on the move-in inspection report. Nevertheless, the tenant took the position that if there are issues with the walls that the landlord wants the tenant to repair, the landlord has not requested the tenant make repairs. Again, the tenant pointed to inspections by the property manager every six months and pointed out that no requests for repairs or warnings were issued with respect to wall damage by the property manager.

As for the water damage in the ceiling, the tenant acknowledged the upstairs toilet leaked during the tenancy; however, the tenant pointed out that there were water stains present in the laundry room, which is below the toilet that leaked, at the start of the tenancy, as seen in the move-in inspection report. The tenant submitted that this is consistent with a previous leak that would necessitate painting.

4. Occupants

The tenant submitted that when she applied for tenancy she had listed herself and her family members (spouse and children) on the tenancy application given to the property manager. The tenant submitted that she then approached the property manager to determine if her sister could also move in. The property manager approved the tenancy with full knowledge that the tenant and her sister and their respective family members would be moving in. Also, the property manager was well aware that the rental unit was occupied by the tenant and her sister and their respective family members during the

tenancy as the property manager inspected the rental unit every six months. The tenant submitted that the property manager took no issue with the number of occupants in the rental unit and did not issue any warning or breach letters to her concerning this issue.

The tenant provided an email she obtained from the property manager dated November 6, 2018 indicating the tenant's sister was not living in the rental unit illegally and had been authorized to occupy the rental unit since the tenancy started.

The tenant stated that her sister and sister's family have since moved out and that she does not intend to acquire any new or additional occupants. The tenant also stated that the landlord's realtor also requested access to the rental unit recently and it was obvious to her that the realtor was there in an attempt to confirm her sister had moved out.

Other issues

The landlord indicated the tenant was repeatedly late paying rent on the 1 Month Notice; however, I only heard of one late payment and the tenant requested permission to pay late on another occasion but when the landlord declined to accept late payment the tenant did pay the rent for that month on time. Residential Tenancy Branch policy provides that three or more late payments are sufficient to find repeated late payment of rent. One late payment of rent is insufficient to end a tenancy for repeatedly late and I did not consider this reason further.

The landlord indicated the tenant is intentionally trying to interfere with the sale of the property, in particular by placing mouse traps in the rental unit. The tenant denied trying to interfere with the sale of the property and explained that the pest control company placed the mouse traps in the rental unit. I noted that the landlord had a pest control company service the property for rodents in November 2018 and I find the tenant's explanation plausible and placing mouse traps in the rental unit when there have been rodent issues is not a basis for evicting the tenancy. Therefore, I did not consider this issue further.

The landlord submitted that the condition of the house, as created by the tenant and her occupants, has caused the landlord to lower the asking price for the rental unit. The tenant submitted that the house is in a very undesirable location and that the rental unit was in need of repairs but not due to tenant's actions or neglect. The condition of the house was addressed more specifically in the issues raised earlier in this decision and I shall consider those reasons further in my analysis.

The landlord alleged the fence at the property has been subject to graffiti recently and the landlord suspects the tenant or occupants are responsible for this. The tenant stated the graffiti has been there for years and the rental unit is in a rough neighbourhood. I found this submission by the landlord to be mere speculation that the tenant, or other occupants of the rental unit, are responsible for the graffiti and I did not consider this issue further.

The tenant raised concerns over the violation of notice of entry requirements. The landlord confirmed she will ensure her agents comply with notice requirements under section 29 the Act and that all future entries will be accomplished by way of a written 24 hour notice. If the landlord, or her agents, enter the unit unlawfully following this proceeding the tenant is at liberty to raise seek further remedy by making another Application for Dispute Resolution.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on a 1 Month Notice, a tenancy may be ended where one of the reasons is proven. The burden of proof is based on the balance of probabilities.

Upon consideration of everything before me, I provide the following findings with respect to the landlord's reasons for ending the tenancy.

1. Wood carvings

The landlord submitted that the tenant, or persons permitted on the property by the tenant, have caused extraordinary damage; and, put the property at significant risk due to wood shavings and/or wood dust that resulted from carving wood in the rental unit, including the living room and kitchen. The tenant disputed that wood carving took place in the kitchen or living room, claiming that wood carvings were painted in the living room or kitchen and that wood carving only took place in the garage.

First, I consider whether the landlord has proven that wood carving was taking place inside the house. The landlord's has not inspected the property herself and has relied upon an email written by her realtor in making her determination. The realtor was not called as a witness to the hearing and not subject to examination. In the absence of the realtor being called as a witness and subject to further examination, I find I cannot place

more evidentiary weight on his email than the tenant's testimony denying wood carving took place inside the house in the absence of other evidence. The landlord did not present other evidence that would corroborate the realtor's statement, such as photographs or other witnesses. I note that the landlord had one witness available to testify at the hearing but the landlord stated that her witness would provide testimony concerning plumbing issues. Therefore, I find the landlord has not sufficiently proven that wood carving was taking place inside the house.

Although the landlord did not prove to my satisfaction that wood carving was taking place in the house, the tenant acknowledged that wood carving had taken place in the garage and that the garage is attached to the house. Both parties provided consistent testimony that the landlord demanded all wood carving activity cease by November 6, 2018 and the tenant has complied with that demand. However, I proceed to consider whether the landlord has proven that the wood carving activity that took place prior to November 6, 2018 has put the property at significant risk or fire or a health hazard.

I accept that wood shavings and/or wood dust is a combustible material; however, I am of the view that there would have to be a significant accumulation of shavings or dust that would create a significant risk or hazard as I doubt that a few wood shavings or a small amount of dust would be a significant risk. Upon review of the landlord's evidence, I find it is unclear as to whether there is an unsafe accumulation of wood shavings or wood dust in the garage or other areas of the rental unit. The landlord's realtor did not describe any accumulation of wood shavings or wood dust in his email. Further, the statement of the restoration company was based on what the landlord represented to the restoration company representative without any indication as to what representations the landlord made or inspection by the restoration company or other person qualified to assess the situation. As such, I find the statements by the restoration company do not establish that the rental unit is at significant risk or a hazard at this point in time but merely described the steps that would have to be made if in fact the property was in need of restoration.

In light of the above, I find the landlord's submission that the property has been placed at significant risk or there is a significant health or safety hazard is premature and based on assumptions or speculation that have not been confirmed. Accordingly, I find the landlord has not established a basis for ending the tenancy due to wood carving activity that has taken place on the residential property

2. Carpets

The landlord submitted that the tenant, or persons permitted on the property by the tenant, has caused extraordinary damage to the carpeting by way of permanent stains and excessive wear. The tenant was of the position the carpets were already stained at the start of the tenancy, although the tenant acknowledged some further staining occurred; however, her sister took responsibility for the damage and the tenant has already paid the landlord's property manager, \$500.00 for the damage.

Upon review of the move-in inspection report, I note that carpeting in a number of rooms were denoted as being in fair to poor condition with pre-existing stains. However, in November 2017 the property manager reports to the landlord that the carpets are damaged by further staining that cannot be removed with steam cleaning and that is why the property manager requested compensation for carpet damage which the tenant started paying. I find I am satisfied by the tenant's testimony, the confirmation from the tenant's advocate, and the property manager's email of November 1, 2017 that the tenant did pay compensation for carpet damage. As I informed the landlord during the hearing, if the property manager did not forward those funds to the landlord that is an issue between the landlord and her former property manager.

Considering the tenant did pay additional monies for carpet staining, and the property manager's communication to the landlord, I accept that the carpet has been further stained during the tenancy. However, the extent of other permanent staining, if any, is less clear to me. I heard that the property manager inspected the rental unit regularly, in six month intervals; however, I do not see photographs from those inspections or condition inspection reports. The landlord had the carpets deep cleaned in October 2018; however, there is no description of permanent carpet staining on the carpet cleaner's invoice. Nor, did the landlord provide any photographs of the permanent carpet stains after the carpets were deep cleaned.

While I accept that additional staining has occurred during the tenancy, which would constitute damage, the tenant has paid for carpet damage already and the carpets were already in fair to poor condition when the tenancy started three years ago, and any additional permanent staining is not clear to me. Therefore, I find it hard to accept that the additional staining, to some extent that is not entirely clear to me, is sufficient to conclude the tenant is responsible for extraordinary damage to the rental unit.

Extraordinary damage is not defined in the Act and I refer to the ordinary meaning of "extraordinary" which is: very unusual or remarkable.

The landlord submitted that carpet replacement will cost approximately \$10,000.00. The landlord did not provide corroborating evidence to support that figure; however, even if I accept that sum as being reasonable, I reject the landlord's argument that she had a reasonable expectation that these carpets were expected to last another 10 years considering they were already fair to poor condition at the start of the tenancy.

In light of the above, I find the landlord has not satisfied me that the condition of the carpeting is ground to end the tenancy for extraordinary damage to the property.

3. Walls and ceiling

The landlord described gouges in the wall but did not provide photographs or inspection reports performed during the tenancy to demonstrate this. Rather, all I have been provided is an email from the landlord's realtor stating there were scratches and marks on the walls.

Further, the move-in inspection report indicates that the walls had some pre-existing damage as evidenced by the notation that there was a drywall patch visible at the start of the tenancy.

Wall scratches, marks and gouges do occur from time to time from wear and tear; and if excessive the marks or gouges may be found to be damage and the tenant is obligated to repair those; however, I do not see any evidence the tenant was instructed to do so by the property manager or the landlord. Nor, do I consider the description of wall condition by the landlord's realtor's email to be sufficient to conclude the tenant has caused extraordinary damage to the walls.

It was undisputed that the ceiling in the laundry room which is below the upper bathroom was damaged by a leak from the toilet above and I was provided photographs of the ceiling damage. It was also undisputed that during the tenancy there was a leak from the toilet after the tenant attempted to tighten the toilet seat fasteners.

Upon review of the move-in inspection report, I note that there was a notation that ceiling in the laundry room was in poor condition and stained at the start of the tenancy. The tenant explained that the staining was consistent with a previous leak from the upstairs bathroom and the landlord did not refute that submission. In this case, I find it likely that there was pre-existing water staining on the ceiling of the laundry room but I also accept that there was further water damage that occurred during the tenancy.

While the ceiling is obviously damaged by a water leak(s), I do not accept that this damage meets the threshold of “extraordinary” damage that would warrant the end of the tenancy.

I am of the view that the cause of the water leak during the tenancy, and the responsibility for repairing the damage, should be determined and if there is liability on part of the tenant she would be responsible for repairing the damage or paying for the repair. Both parties indicate they intend to seek monetary compensation from the other with respect to the toilet replacement and toilet leak and they remain at liberty to pursue such claims unclear future Applications for Dispute Resolution. However, to be clear, I make no finding as to liability for toilet replacement or ceiling damage liability in this decision. Rather, I have only considered whether the water damage to the ceiling during the tenancy constitutes extraordinary damage, and I am of the view that it is not, especially considering the ceiling was already in poor condition with signs of previous water leak(s).

4. Occupants

It is undisputed that for most of the tenancy the tenant has resided in the rental unit with 9 other occupants. The parties were in dispute as to whether this is basis for ending the tenancy.

The tenancy agreement names one tenant; however, the naming of one tenant does not necessarily preclude a tenant from having additional occupants reside with them in the rental unit. The tenancy agreement includes the standard term concerning guests and occupants on page 5 of the tenancy agreement. The standard term provides:

OCCUPANTS AND GUESTS

- 1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit**
- 2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.**
- 3) 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 addendum to the tenancy agreement also includes the following term:

8. No subletting or new roommates unless written permission from landlord

The landlord indicated one of the reasons for ending the tenancy was because the tenant had assigned the tenancy agreement or sublet the rental unit.

Subletting occurs where a tenant vacates a rental unit and gives possession of the unit to others. In this case, the tenant remained in possession of the rental unit and I find there was no subletting in this case. Accordingly, the tenancy cannot be ended for subletting because subletting has not occurred.

Assignment of a tenancy agreement occurs when another person takes over the tenancy agreement and becomes obligated to fulfil its terms, including the payment of rent. In this case, the rent has been paid by the tenant and the tenant has remained obligated to fulfill the terms of the tenancy agreement. Accordingly, I find the tenancy agreement has not been assigned and the tenancy cannot be ended for this reason.

The landlord alleged that having additional occupants was a breach of the tenancy agreement; however, the Act does not contemplate ending a tenancy for simply breaching a term of the tenancy agreement. Rather, section 47(1)(h) of the Act provides that a tenancy may be ended where:

- (h) the tenant
 - (i) has failed to comply with a material term, and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

A 1 Month Notice available to landlords provides space to end a tenancy for a reason consistent with section 47(1)(h); however, the landlord did not indicate this reason on the 1 Month Notice she served upon the tenant. Nor, did the landlord indicate in the "Details of Cause" on the 1 Month Notice that she considered the additional occupants to be 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. In these circumstances, I do not amend the 1 Month Notice to indicate the reason consistent with section 47(1)(h).

The landlord did indicate that she seeks to end the tenancy because the tenancy had an unreasonable number of occupants, which is a permissible reason for ending the tenancy under section 47.

The tenant permitted additional persons to reside in the rental unit with her. The tenant submitted that the property manager was well aware of the number of occupants in the rental unit and I find that submission reasonably likely as I am of the view that it would be difficult to disguise or hide the fact that there were several occupants during the regular inspections that the property manager conducted during the tenancy.

The tenant also submitted that the property manager took no issue with respect to the number of occupants residing in the rental unit and did not issue any breach or warning letter to the tenant. The landlord did not present evidence to contradict this information. And accept the tenant's submission as being reasonably likely as I am of the view that if the property manager took issue with the number of occupants the landlord would have provided correspondence from the property manager to indicate such. Since the property manager did not take issue with the number of occupants in the rental unit I find it is difficult for the landlord to now prove that an unreasonable number of occupants were permitted to reside at the property by the tenant.

When I look at the communication between the property manager and the landlord, it would appear that the property manager informed the landlord that the tenant and her sister would be and were occupying the rental unit and did not indicate that their respective family members were also residing with them. While the property manager may not have been entirely forthright in communicating to the landlord that there were several other occupants in the rental unit, the failure to communicate to the landlord is an issue between the landlord and her property manager. The landlord chose to be represented by an agent during most of the tenancy and the tenant has a reasonable expectation to rely upon property manager's actions, or lack thereof, in dealing with the issue of additional occupants.

Also of consideration is that the number of occupants in the rental unit has since been reduced to five and I find that number is not unreasonable for a six bedroom home.

In light of the above, I have found the current number of occupants is not unreasonable; and, there is insufficient evidence of assignment or subletting. Therefore, I find the landlord has not established a basis for ending the tenancy for additional occupants based on the reasons stated on the 1 Month Notice.

Summary

Considering all of the above, I find the landlord has not met her burden to prove the tenancy should be ended for the reasons indicated on the 1 Month Notice. I grant the tenant's request to cancel the 1 Month Notice dated December 24, 2018 with the effect that the tenancy continues at this time. I dismiss the landlord's request for an Order of Possession.

Considering the tenant was successful in her application and the landlord was unsuccessful, I award the tenant recovery of the \$100.00 filing fee she paid for her application. The tenant is hereby authorized to deduct \$100.00 from a subsequent month's rent in satisfaction of this award.

Since this tenancy is continuing at this time, I strongly encourage the parties to consider their respective obligations under the Act, in particular: The landlord's restricted right to enter the rental unit provided under section 29, including that by any of her agents; and, both parties are encouraged to familiarize themselves with a landlord's and a tenant's obligation to repair and maintain a property as provided in section 32. Below, I reproduced sections 29 and 32 for the parties' reference:

Landlord's right to enter rental unit restricted

- 29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
 - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
 - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

For further information concerning a landlord's and a tenant's obligation to repair and maintain a property, I refer the parties to Residential Tenancy Policy Guideline 1. Policy Guidelines are available from the RTB website located at: gov.bc.ca/landlordtenant

Conclusion

The tenant's application is granted and the landlord's application is dismissed.

The 1 Month Notice to End Tenancy for Cause dated December 24, 2018 is cancelled and the tenancy continues at this time.

The tenant is awarded recovery of the filing fee she paid for her application and the tenant is authorized to deduct \$100.00 from a subsequent month's rent to realize this award.

The monetary claims filed by both parties were severed from their respective applications and dismissed with 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: March 13, 2019

Residential Tenancy Branch