



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC FFT LRE OPC FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- cancellation of the landlords’ 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order to suspend or set conditions on the landlords’ right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*.

The landlord’s agent, LN, appeared with the tenant in this hearing. Both parties 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 receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant were duly served with each other’s Applications and evidence.

The tenant confirmed receipt of the 1 Month Notice dated January 15, 2019, with an effected date of February 28, 2019. The 1 Month Notice was posted on her door, as well

as sent to her by email on January 15, 2019. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

Preliminary Issue: Adjournment of Hearing

At the outset, the tenant made an application requesting an adjournment as the tenant did not have enough time to submit all her evidence for the hearing.

The landlord opposed the application for an adjournment stating that the matter had been outstanding since January 2019. The landlord testified that the tenant had ample opportunity to prepare for this hearing, and an adjournment would be extremely prejudicial to him.

In deciding whether the tenant's adjournment application would be granted, I considered the following criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

While I am sympathetic to the tenant's situation, I find that the tenant failed to establish how this adjournment request was due to issues beyond her control. I find that the tenant had several months to prepare for this hearing, and the tenant has failed to establish why this adjournment request arises out of circumstances beyond her control.

I am not satisfied that an adjournment would result in a resolution of this matter. I find that the landlords were ready to proceed, and as this matter relates to whether or not this tenancy should end on the grounds provided on a 1 Month Notice, I find the landlords would be significantly prejudiced by a delay in this matter by adjourning the hearing and delaying this matter.

The request for an adjournment was not granted. The hearing proceeded.

Issues

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Is the tenant entitled to an order to suspend or set conditions on the landlords' right to enter the rental unit?

Are both parties entitled to recover the filing fees for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy began approximately 7 years ago, with monthly rent currently set at \$1,000.00, which is payable on the first day of each month. The landlords testified that this tenancy started 7 years ago, but the tenant lived there on and off as a tenant during that time with other tenants living there intermittently during this period. The tenant testified that she had lived there for the entire duration as a tenant.

The landlords submitted the notice to end tenancy providing the following grounds:

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

It was undisputed by both parties that the rental unit was sublet to another tenant by the tenant while she was away. The landlord provided a tenancy agreement for a sublease agreement for a four month period from January 1, 2019 to April 30, 2019, with monthly rent set at \$1,700.00.

The tenant testified that she had sublet the rental unit, as she had done so in the past. The tenant admitted that on this occasion she did not inform the landlords, nor did she obtain their written consent, but she had done so with the understanding that the landlords had never opposed this arrangement in the past. The tenant emphasized that she had been a good tenant the last 7 years, and was candid about her postings advertising the rental unit, which were in the laundry room and on the internet.

The landlords testified that they only became aware of the sublease when dealing with a plumbing issue, and discovered another tenant residing at the rental unit. The landlords testified that they were not aware that the tenant had sublet the rental unit, and the tenant had not informed them nor did she request permission to do so. The landlords

testified that they only discovered the sublet accidentally, and that no previous sublet arrangements have ever been approved or requested.

Analysis

Section 47 of the Act, in part, states as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

It was undisputed by the tenant that she had sublet her rental unit. The tenant, however, argues that the landlords had implied consent as they had allowed the tenant to do so in the past.

Residential Tenancy Policy Guideline #11 states the following about express and implied waivers:

“There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights. Implied waiver can also arise where the conduct of a party is inconsistent with any other honest intention than an intention of waiver, provided that the other party concerned has been induced by such conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or her detriment. To show implied waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amount to an estoppel....”

The tenant did not dispute that she failed to inform the landlords, or obtain the landlords' written permission for the sublet that took place starting January 2019. The tenant's testimony is that the landlords were aware that she had made similar arrangements in the past, and took no issue. The landlords disputed this, and gave sworn testimony that they were never aware of any sublease arrangements, nor were they consenting to it.

I find that the tenant has not provided sufficient evidence to support that the landlords were informed, or were aware of previous sublease arrangements. I find that it was undisputed that the tenants had sublet the rental unit for a four month period beginning January 2019, and this was done without the landlords' knowledge or permission. On this basis, I dismiss the tenant's application to cancel the 1 Month Notice dated January 15, 2019. I also dismiss the tenant's application restricting the landlords' access to the rental unit as I am not satisfied that the tenant had provided sufficient evidence to support that the landlords have contravened the *Act*. The tenant's application to recover the filing fee is also dismissed.

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.

A copy of the 1 Month Notice was submitted for this hearing, and I find that the landlords' 1 Month Notice complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice, February 28, 2019. I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

As the landlords were successful with their application, I allow them to recover the filing fee for their application.

Conclusion

I dismiss the tenant's entire application without leave to reapply. I find that the landlord's 1 Month Notice is valid and effective as of February 28, 2019.

I grant an Order of Possession to the landlord(s) effective two **days after service of this Order** 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.

I issue a \$100.00 Monetary Order in favour of the landlords, which allows the landlords to recover the filing fee for this application.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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