Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOWNTOWN SUITES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution ("Application") filed by the Tenant under the *Residential Tenancy Act* ("Act"), seeking to cancel a One Month Notice to End Tenancy for Cause ("One Month Notice").

The hearing was convened by teleconference call and was attended by the Tenant and an agent for the Landlord, L.C. ("Agent") and L.T., an observer who did not give evidence in the hearing. All Parties were affirmed and were given the opportunity to present their evidence orally and in written and documentary form.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution and/or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses in the hearing and confirmed their understanding that the decision would be emailed to both Parties.

At the outset of the hearing, I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Agent advised me of the property management company representing the owner, so I have amended the respondent's name in the Application, pursuant to section 63(3)(c) and Rule 4.2.

Issue(s) to be Decided

- Is there a valid reason to cancel the 1 Month Notice under the Act?

- If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an order of possession pursuant to Section 55(1) of the *Act*?

- Is the Tenant entitled to recovery of the cost of the filing fee for this Application?

Background and Evidence

The Agent explained that the reason she served the One Month Notice on the Tenant was because she believed that the Tenant was subleasing or using the rental unit as an Airbnb, in conflict with the tenancy agreement and the Strata Bylaws. The Agent's undisputed evidence is that the Tenant has received $6,200.00 in fines from the Strata for allowing strangers in the building without following the proper protocol.

The Tenant submitted a copy of the One Month Notice, which pursuant to section 52 of the Act, is dated, signed, has the rental unit address, gives the grounds for the eviction and is in the approved form.

During the hearing, the Tenant admitted that she had advertised the rental unit in Airbnb in 2015 and that she had advertised for what she explained was a roommate in 2018, both against the Landlord's rules. The Tenant acknowledged that she had been fined by the Strata for allowing strangers into the building without following proper protocol, including not filling out a "Form K" to identify visitors who would be staying in the building.

The Parties agreed that the Tenant had also allowed strangers into the building periodically in February through May 2019, and that this drew the attention of the building concierge, the Strata and the Agent, and led to the One Month Notice being served on the Tenant. The Tenant's testimony in the hearing was that she was married at the end of April 2019, and that she had allowed friends and family to stay in the rental

unit on and off in these months. Further, the Tenant said that her parents were now staying in the rental unit on a visit from Brazil and that they would be staying until sometime in the summer.

The Tenant said that her husband has a condominium in another neighbourhood and that he does not live with her in the rental unit. The Tenant did not answer the Agent's question when asked where the Tenant was living now.

The Tenant provided a letter from a friend, K.P., dated April 9, 2019. In this letter, K.P. said the Tenant let her and her boyfriend stay in the rental unit on their visit to the city on February 14 to 16, 2019, for the Tenant's bridal shower. This letter had the friend's name and telephone number provided, but it was not signed by the friend. The same is true of another letter from another friend dated April 10, 2019, who said that she and her boyfriend were visiting for a pre-wedding celebration in March 7 – 11, 2019. The Tenant submitted a few other such letters of a similar nature and also included copies of boarding passes that friends had sent her as proof of their visits. The Tenant did not point out and I did not see any evidence from her parents about their visit, nor more specific evidence of her marriage.

The Agent explained in the hearing that tenants and occupants of the residential property are required to register anyone who is going to be occupying the rental unit other than the tenant by completing and submitting a "Form K" to the concierge. This is the manner in which the owners know who is in the building for security and emergency protocols.

Analysis

Section 34 of the Act states that "unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit." The question before me is whether the Tenant is using the rental unit for her friends and family or is subletting or using it for Airbnb, as she has in the past.

Given the Tenant's history of getting into trouble with the Landlord and the Strata for breaching the Act and tenancy agreement in this regard, I find that the Tenant's indifference about letting friends and relatives stay in the rental unit without following building protocol after warnings and fines from the Strata and Landlord raises questions in my mind about the situation.
Although the letters from friends have different names, telephone numbers, dates and fonts, I find they are all surprisingly similar in length and content, and that none are

signed by the friends or family members. They may have been cut and pasted from emails, which would explain the lack of signature, but their similarity raises questions in my mind about their authenticity.

Based on the evidence before me, overall, I find it more likely than not that the Tenant continued to breach sections 34 and 47 of the Act by allowing strangers to use or sublet the rental unit, without the Landlord's written consent. Further, I find that the form and content of the One Month Notice is consistent with section 52 of the Act. Accordingly, I dismiss the Tenant's Application and award the Landlord an order of possession.

The Tenant was unsuccessful in her Application, so I do not award her recovery of the filing fee.

Conclusion

The Landlord served the Tenant with a One Month Notice for assigning or subletting the rental unit without the Landlord's written permission. I have found it more likely than not that the Tenant violated sections 34 and 47 of the Act in this regard, and that the One Month Notice is valid.

As such, I find that the Landlord is entitled to an order of possession of the rental unit effective on May 31, 2019 at 1 p.m. This order may be filed in the British Columbia Supreme Court and enforced as an order of that Court.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 28, 2019

Residential Tenancy Branch