



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenants' 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.

The tenant, J.S., the named tenant, D.M. and the landlord's agent attended the hearing via conference call and provided testimony. The tenant, J.S. stated he was appearing as an agent for the named tenant, D.A.S. (his mother). The named tenant, M.H. did not attend. The named tenant, D.M. provided undisputed testimony that he was not a tenant, but an occupant of the rental unit. The tenant, J.S. (the tenants) confirmed that D.M. and the other named tenant, M.H. were only occupants and not tenants.

Both parties confirmed the tenants served the landlord with the notice of hearing package and the submitted documentary evidence in person on May 10, 2019. Both parties also confirmed the landlord served the three listed tenants on the signed tenancy agreement with the submitted documentary evidence via Canada Post Registered Mail on May 24, 2019.

I accept the undisputed testimony of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

The tenants also filed an amendment clarifying the named landlord as a business and not an individual listed as the landlord's agent. The tenants application shall be

amended to reflect the actual listed tenants and the landlord as per the signed tenancy agreement.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties agreed that on April 23, 2019, the landlord served the tenant with the 1 Month Notice dated April 18, 2019 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of May 31, 2019 and that it was being given as:

- the tenant has allowed an unreasonable number of occupants in the unit;
- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk; or
- the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
 - Jeopardize a lawful right or interest 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 tenant has assigned or sublet the rental unit/site without the landlord's written consent.

No details of cause were listed on the notice.

During the hearing the landlord clarified that the landlord would only be proceeding on two of the reason(s) selected on the 1 month notice.

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

The remaining 7 reasons selected were cancelled by the landlord.

The landlord provided testimony in which the tenant has been breaching a material term of the tenancy by renting out the unit on "Airbnb" as provided in a caution letter sent to the tenant dated September 19, 2018, a copy of the online ad, a second caution letter sent to the tenant dated October 23, 2018, a copy of that online ad and two additional copies of online ads dated after the 1 month notice. The landlord stated that this was contrary to section 2.11 of the signed tenancy agreement.

The landlord also stated that the tenants had assigned/sublet the rental unit without the written permission of the landlord. The landlord stated that this was contrary to section 2.5 of the signed tenancy agreement. The landlord provided undisputed testimony that the tenants were renting out the unit via "Airbnb" without the landlord's written permission.

The tenant, J.S. stated that he was not disputing the landlord's reasons for the notice, but instead was seeking an extension to the effective end of tenancy date. The tenant stated that they were in the process of moving and required more time. The tenant, J.S. was asked to confirm that he was not disputing the reasons on the notice and only wished for an extension of the effective end of tenancy date. The tenant, J.S. confirmed his sole reason for filing an application for dispute.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, the tenant, J.S. has indicated and confirmed that his sole reason for filing an application for dispute was to seek an extension of the effective end of tenancy date listed as May 31, 2019. On this basis, I find that the 1 month notice dated April 18, 2019 is upheld and the landlord has provided undisputed testimony on the reasons for cause.

Pursuant to section 55 of the Act, the tenants' application is dismissed and the landlord is granted an order of possession. As the effective end of tenancy date has now passed, the tenants shall comply with the order no later than 2 days after being served with the order.

Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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: June 17, 2019

Residential Tenancy Branch