



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE AXFORDS and [tenant name
suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenants' application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice).

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. The witness identified above is the sub-tenant who has been residing in a basement suite in this rental unit since July 2014.

As Tenant MB (the tenant) confirmed that they were handed the 1 Month Notice by the landlord's representative on June 24, 2019, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the landlord's agent (the agent) confirmed that they received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on July 12, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Although the tenants identified the landlord's agent as identified above as the Respondent in this application, the landlord's 1 Month Notice identified the owner of the property as noted above (XMY) as the landlord.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The tenants provided written evidence that they moved into the upper level of this rental home in June 2013. Another couple moved into the basement suite at that time. When the basement tenants departed, the tenants provided undisputed written evidence that three Australians moved into the basement suite from January 2014 until May 2014. The tenant's witness moved into the basement suite in July 2014, and continues to live there.

The parties entered into written evidence a copy of the one-year fixed term Residential Tenancy Agreement (the Agreement) that the tenants and the then landlord signed on June 27 and June 30, 2015. The Agreement used the standard form produced by the Residential Tenancy Branch (the RTB). The initial fixed term began on June 1, 2015 and was to end on May 31, 2016. When the initial term expired, the tenancy continued on a month-to-month basis. Monthly rent was initially set at \$2,800.00, payable in advance on the first of each month. The parties agreed that the monthly rent has increased to \$3,200.00 as of January 2019. The tenants paid a \$1,400.00 security deposit when this tenancy began.

Neither party in attendance was certain as to when the current owner of the property, YMY, (the owner) took over ownership of this property. The tenant believed that this happened near the end of June 2015. The tenant gave undisputed sworn testimony that the owner spent only 15 minutes inspecting the dwelling before they purchased the property. The tenant said that the owner met with the tenant's spouse and did not inspect the basement suite, even though there was a separate mailbox for the tenants in that suite and a separate entrance. The tenant testified that their spouse specifically asked the owner whether they would like to see the basement apartment, but the owner said that they were not interested in doing so. The tenant said that at that time, it appeared that the owner was planning to demolish the building to make way for a new structure, as had been the case elsewhere in this neighbourhood. Subsequently, the owner apparently changed their mind and decided to continue this tenancy.

The current tenant in the basement suite, the witness, has always paid rent for that space directly to the tenants. The witness gave undisputed sworn testimony that they currently pay \$900.00 each month in rent to the tenants.

The agent gave undisputed sworn testimony that on or about the first week in June 2019, the owner visited the property and conducted their first ever full inspection of the

property. At that time, the owner discovered that the tenants had rented out the basement to an unrelated person. The agent entered into written evidence a statement from the overseas owner that they were in complete shock that there was another unrelated person residing in the basement of this building. The agent said that there had been frequent communication between the tenants and the owner during this tenancy by email and that the tenants had never revealed that they were obtaining rent from another tenant in the basement of this residence. After consulting with the agent and discussing this situation with the tenants, the owner issued the tenants the 1 Month Notice for the following reason, seeking an end to this tenancy by July 31, 2019.

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

The agent said that the owner considered the trust between the parties broken and wanted to end this tenancy due to the tenants' failure to abide by the terms of the Agreement they signed which did not permit subletting any portion of the premises without the landlord's written consent.

The parties agreed that the landlord has accepted rent for July and August 2019, and that the landlord would be accepting the tenants' rent payment for September 2019, as it was unlikely that they would have obtained a decision regarding the tenants' application by the time that rent became due for September 2019.

The tenant and their witness, the sub-tenant in the basement suite, maintained that the owner was negligent in failing to conduct an inspection of the whole dwelling, including the basement suite when the owner purchased this property. The tenant also asserted that the owner was negligent in failing to conduct inspections of the rental premises between the time they purchased it and June 2019, when they conducted their first full inspection of the property.

The tenant said that they rented this property from an agent named Steve under the same general terms they had used for a previous rental they had with that agent. On this basis, they understood that they were allowed to rent to sub-tenants in the basement suite, as this arrangement had been in place both at their previous residence managed by Steve and by the previous tenants in the dwelling where they currently reside.

In their written evidence and in sworn testimony, the tenant maintained that the landlord had failed to abide by various provisions of the *Act*, including specifically sections 14(2), 23 (1), (4) and (6), and sections 47(1)(c) and 47(1)(j).

Analysis

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

Section 47(1)(i) of the *Act* reads in part as follows:

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if...*

(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];

Section 34(1) of the *Act* states that "unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit."

In this case, the relevant wording of the Agreement is section 9 which establishes that in order to sublet space within the rental unit to someone else, the tenants first needed to obtain the landlord's written permission. The Agreement identified only the two tenants as the occupants of this rental space. Section 3 of the Addendum the tenants signed confirmed that if any additional occupants were to reside on the premises for more than two weeks that they would be considered trespassers. Failure to obtain the landlord's written permission to allow these additional people to occupy part of the rental unit could constitute a breach of a material term of the Agreement and could lead to the immediate termination of the tenancy.

I accept that there may have been an oversight in adding the tenants' children who clearly lived with the tenants on the Agreement, or started living their after their birth during this tenancy. There is no mention in the Agreement that the witness was also

residing in the rental dwelling in a separate suite in the basement or that the tenants were receiving rent directly from the witness.

In considering this matter, I have reviewed the tenants' allegations that the landlord had breached various sections of the *Act*, and that these breaches had a bearing on the landlord's ability to end their tenancy for cause on the basis of the tenants' subletting of space within the rental unit to the tenant's witness who lives in the suite below them. For the following reasons, I find little relevance between the sections of the *Act* identified by the tenants and the tenants' application to cancel the 1 Month Notice.

Section 14(2) of the *Act* reads as follows:

14 (2) *A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.*

The tenant provided no explanation as to why or how section 14(2) of the *Act* applied to this matter. The only signed Agreement between the parties is the one entered into in June 2015, which included the above-noted standard provisions regarding subletting of space within the rental premises to others.

Section 23(1) of the *Act* reads as follows:

23 (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

I find that this section of the *Act* has no bearing on this application as the only consequences for a failure to abide by this provision is if a report of an inspection does not occur. Landlords who fail to conduct an inspection of the rental unit at the beginning of a tenancy may extinguish their rights to retain the security deposit. However, the return of the security deposit is not at issue. I also note that the tenants moved into the rental unit in June 2013, almost two years before the Agreement was signed. Thus, whether or not the landlord conducted an inspection two years later has little bearing on anything that is before me.

Sections 47(1)(c) and (j) of the *Act* identify other reasons that a landlord may end a tenancy for cause. These involve allegations by landlords that there are an

unreasonable number of occupants in a rental unit or allegations by landlords that a tenant has provided false information about a property to a prospective tenant or purchaser. As was noted above, the sole basis for the landlord seeking an end to this tenancy for cause was on the basis of section 47(1)(i) of the *Act*.

Based on a balance of probabilities, I find that the wording of the Agreement, the Addendum to that Agreement, and the names identified as tenants in the Agreement, as well as section 34 of the *Act*, the written evidence and the sworn testimony of the parties reveal that the landlord had sufficient reason to issue the 1 Month Notice pursuant to section 47(1)(i) of the *Act*. There is little evidence that the owner was aware that the basement suite was being occupied by a non-family member until the owner inspected the rental premises in June 2019. Had the owner discovered this information earlier, there is every reason to believe that the owner would have issued a 1 Month Notice shortly thereafter. The owner's failure to complete a full inspection of the premises when they first purchased the property has no bearing on their decision to take action shortly after they became aware that the tenants had breached their Agreement by renting out a portion of the rental premises to someone else without the landlord's written permission to do so. For these reasons, I dismiss the tenants' application to cancel the 1 Month Notice.

Section 47(3) of the *Act* requires that "a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. Based on undisputed testimony of the landlord, I find that the tenant was served with the Notice to End Tenancy, and I find that the 1 Month Notice does comply with the form and content provisions of 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.

For these reasons, I find that the owner, as identified on the 1 Month Notice, is entitled to an Order of Possession. At the hearing, the parties discussed the very real possibility that this decision would not be received by the parties until after rent became due for September 2019. As the non-payment of rent has never been an issue with respect to this tenancy and the agent did not object to the tenant's request that this tenancy be allowed to continue until at least the end of September 2019, to enable the tenants and the witness to find alternate accommodations, the Order of Possession will take effect on September 30, 2019. As discussed, the owner may choose to provide additional

time if that is agreed upon between the parties. The owner will be given a formal Order of Possession which must be served on the tenant(s).

Conclusion

I dismiss the tenants' application to set aside the 1 Month Notice. The owner, XMY, is provided with a formal copy of an Order of Possession effective at 1:00 p.m. on September 30, 2019. Should the tenant(s) or anyone occupying any portion of the rental premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: August 30, 2019

Residential Tenancy Branch