



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, OLC, FFT, AS

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; an order limiting or setting conditions on the landlord's right to enter the rental unit; an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application. The tenant also filed an amendment to the application seeking an order permitting the tenant to assign or sublet.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The landlord also called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Has the tenant established that the landlord's right to enter the rental unit should be ordered to be limited or allowed conditionally?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and specifically with respect to entering the rental unit with reasonable notice?

- Should the landlord be ordered to allow the tenant to assign or sublet?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on December 21, 2018 and expires on December 20, 2019 thereafter reverting to a month-to-month tenancy and the tenant still resides in the rental unit. Rent in the amount of \$2,800.00 per month is payable on the 21st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,400.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a condominium apartment, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that she met the tenant 10 years ago, who told the landlord's agent that he needed a 3 bedroom unit so his kids could sleep over, and the landlord's agent trusted the tenant. In April, 2019 the tenant told the landlord he used the rental unit for short-term rentals on AIRBNB, which is not permitted by the strata. The advertisements commenced on January 12, 2019 which is shortly after the tenant took possession.

The landlord had a conversation with the tenant on May 21, 2019 about a meeting the landlord had with the strata council, and the tenant said he wouldn't rent on AIRBNB again and the landlord trusted that. However, on July 11, 2019 the strata sent a letter to the landlord and posted a copy to the door of the rental unit stating it had come to the attention of the strata corporation that the rental unit had been used as a short term rental as of January 10, 2019, contrary to the Bylaw and that the strata council was considering a fine of up to \$1,000.00 for each contravention of the Bylaw. It grants an opportunity to answer to the complaint, including a hearing before the strata council, if requested, and that failure to respond in writing within 21 days would result in a determination of whether or not to impose a fine or other penalty.

Another letter of the strata corporation is addressed to the tenant dated July 26 and states that it had come to the attention of the strata council that the tenant had been "harassing the residents about renting out their units when they are away" so that the tenant could look after their units as a rental. It states that if continued, the strata corporation would report it to the Real Estate Council of BC and that rental units must be managed by a licensed rental manager.

The tenancy agreement contains a term about assignment and subletting:

9. ASSIGN OR SUBLET

1) The tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this tenancy agreement is for a fixed length and has 6 months or more remaining in the term, the landlord must not unreasonably withhold consent. Under an assignment a new tenant must assume all of the rights and obligations under the existing tenancy agreement, at the same rent. The landlord must not charge a fee or receive a benefit, directly or indirectly, for giving this consent.

2) If a landlord unreasonably withholds consent to assign or sublet or charges a fee, the tenant may apply for dispute resolution under the *Residential Tenancy Act*.

The advertisement on AIRBNB is still there and copies have been provided as evidence for this hearing. The landlord testified that on August 12, 2019 the landlord received a strata fine of \$1,000.00 because of another short-term rental.

The landlord caused the tenant to be served with a One Month Notice to End Tenancy for Cause, and a copy has been provided for this hearing. It is dated July 17, 2019 and contains an effective date of vacancy of August 31, 2019. The reasons for issuing it state:

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

The "Details of Cause(s)" section states: The Tenant has been operating rental unit as unauthorized AIRBNB.

The landlord's witness testified that the One Month Notice to End Tenancy for Cause was placed on the door of the rental unit on July 18, 2019.

The tenant testified that he advertised on AIRBNB in January, 2019. In mid-April the tenant had visited City Hall and was told that AIRBNB rentals were not permitted. He also spoke to the strata council member and was told it was not permitted so the tenant stopped renting.

The tenant was not given any written notice to correct a breach, and explained clearly to the landlord that the tenant did not host any guests after April.

The strata council just wants the tenant to move out, and the landlord is conspiring with the strata council. A member of the strata council met a prospective guest from France who did not speak English, but that was in April and the tenant found another place for him to stay.

The tenant blocked everything on the website in April so thought the advertisement was gone, but now does not know how to get the advertisement off of the websites, and was away in Europe for most of August, 2019. The tenant will attempt to contact system support services and have the advertisement removed within a week.

The tenant also seeks to have the landlord give reasonable notice to attend at the rental unit and to comply with the law with respect to entering. The parties are known to each other and after this hearing the tenant wants the landlord to give reasonable notice and comply.

The tenant's amendment to the application seeks to have permission granted to assign or sublet because there is a spare bedroom in the rental unit.

Analysis

Firstly, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the reasons for issuing it are in dispute.

A material term of an agreement is a term that is so important to one party or another that if the parties did not agree to that term, one of the parties would not have entered into the agreement. Further, in order for a landlord to end a tenancy for breach of a material term of the tenancy agreement, there must be written notice from the landlord to the tenant that such behaviour is material and giving the tenant reasonable time to correct such behaviour. In this case, the landlord spoke to the tenant and the strata gave the tenant notice. The landlord has not given written notice to correct the breach.

There is no question in my mind, however, that the tenant did assign or sublet without the landlord's written consent, which is contrary to the *Act* and the tenancy agreement. The tenant testified that he did not have any AIRBNB guests after April, 2019, however the advertisements are still running, which the tenant does not dispute. I have reviewed the advertisements and note that they show availability in July and August, 2019. The tenant also testified that he could call someone for technical support and have the advertisement taken down because he doesn't know how to do it himself. It is clear that the tenant had plenty of time between April and August, 2019 to have the advertisement removed, and if the tenant was able to "block" them, surely the tenant could have taken any advertisements off websites. I do not accept the tenant had or has any intention of

complying. I dismiss the tenant's application to cancel the One Month Notice to End Tenancy for Cause.

The law also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*, and therefore I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

Since the tenancy is ending, I dismiss the balance of the tenant's application and amendment without leave to reapply.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: September 24, 2019

Residential Tenancy Branch