



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's request pursuant to the Residential Tenancy Act (the Act) for cancellation of the One Month Notice to End Tenancy for Cause (the Notice), issued pursuant to section 47.

The landlord, represented by YJ and SS ("landlord"), and the tenant, represented by SV ("tenant"), attended the hearing and were each given an opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present, I confirmed that there were no issues with service of the tenant's Application for dispute resolution. The landlord confirmed receipt of the tenant's Application. In accordance with sections 88 and 89 of the Act, I find the respondent was duly served with the Notice of Hearing.

Preliminary issue – service of documents

The landlord affirmed that document "Evidence 5" was not served to the tenant. The tenant affirmed the tenancy agreement was not served by the landlord. These documents are excluded per section 3.15 of the Rules of Procedure.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice?
2. If the tenant's Application is dismissed, is the landlord entitled to an Order of Possession, pursuant to section 55 of the Act?

Background and Evidence

While I have turned my mind to all the accepted evidence provided by the parties, including documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. I explained Rule of Procedure 7.4 to the parties; it is their obligation to present the evidence to substantiate their application.

Both parties agreed the tenancy started on December 13, 2014. Rent is \$1,910.00 per month due on the first day of each month. The landlord affirmed a security deposit of \$865.00 and a \$100.00 deposit for electronic building access key ("fob") was collected at the outset of the tenancy and the landlord retains this \$965.00. The tenant's representative affirmed the security deposit was \$1,065.00.

Both parties also agreed that the Notice was personally served to the tenant on November 28, 2019. The effective date of the Notice is December 31, 2019.

A copy of the Notice was provided. The grounds to end the tenancy cited in the Notice are:

- Tenant has allowed an unreasonable number of occupants in the unit/site.
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
- The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
- 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 Notice also specifies that:

- (1) Unit (1 bdrdm) is being rented out to multiple (2-3) other tenants without the approval of landlord. Previous person living in this apartment came forward to building management (Sep 2019). Two tenant not on approved tenant sheet were in possession of the unit's fobs and came forward to building management asking for replacements – was found the fobs were duplicated (Nov 2019).
- (2) Violation of the building bylaws.
- (3) Improper use of the unit – short term lease without landlord's approval (June/Nov 2019)

The landlord testified the tenancy agreement is with HB (also known as NH) and SV was listed as an occupant. SV has been responding to the landlord's contacts since the beginning of the tenancy. The landlord hasn't authorized a sublease and short-term rentals are against the by-laws of the strata and municipality.

The landlord referenced the three letters she provided in evidence which she received between June and September 2019 from the management company. The letters provide very detailed allegations about the unit being rented for short periods by individuals (JN and NG) not listed on the rental unit's Form K in August and November of 2019. The allegations include details about individuals not listed on the landlord's Form K requesting replacement of counterfeit fobs, assistance with moving out and return of their security deposits.

The landlord also provided a copy of an email exchange between her and the management company to support her testimony that the tenant had surreptitiously caused his email address to be recorded with the management company as an agent of the landlord since approximately 2015.

The tenant testified he has not ever seen the tenancy agreement and he denied being an occupant. His email is listed with building management because he is the tenant's agent. He denied there has been any short-term rentals or subleases and claims only the tenant lives in the unit. The individuals encountered by the building management were guests of the tenant and a cleaner. If the management company had evidence of short-term rentals occurring, it would have issued a fine to the landlord, which it has not.

Analysis

Section 47 of the Act allows a landlord to end a tenancy for cause:

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

[...]

(c)there are an unreasonable number of occupants in a rental unit;

(d)the tenant or a person permitted on the residential property by the tenant has:

- (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- (h) the tenant
 - (i) has failed to comply with a material term,
 - (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];

The landlord served the Notice on November 28, 2019, and the tenant filed this Application on December 08, 2019. I find that in accordance with Section 47 (4) of the Act, the tenant's application was submitted before the ten-day deadline to dispute the Notice.

Residential Tenancy Branch Policy Guideline 19 states:

Unlike assignment, a sublet is temporary. In order for a sublease to exist, the original tenant must retain an interest in the tenancy. While the sublease can be very similar to the original tenancy agreement, the sublease must be for a shorter period of time than the original fixed-term tenancy agreement – even just one day shorter. The situation with month-to-month (periodic) tenancy agreements is not as clear as the Act does not specifically refer to periodic tenancies, nor does it specifically exclude them. In the case of a periodic tenancy, there would need to be an agreement that the sublet continues on a month-to-month basis, less one day, in order to preserve the original tenant's interest in the tenancy. (page 4)

[...]

A tenant may assign or sublet their interest in a tenancy agreement only with the prior written consent of the landlord. If a tenant assigns or sublets without obtaining the landlord's prior written consent (or, in the case of a manufactured home, a director's

order), the landlord has cause to serve a One Month Notice to End Tenancy (form RTB33) under the Legislation. Whether or not such a notice is successful, if challenged, will depend on an arbitrator's finding as to whether a sublet as contemplated by the Legislation has occurred. (page 7)

The landlord provided three letters from the strata management company, all dated from 2019, documenting sublet rentals are taking place in the rental unit. Names of sublet renters were provided, in addition to a convincing testimony.

The tenant's testimony that family members and friends of the tenant are guests was vague and non-convincing. No details were provided.

The tenant's testimony that his email address was provided to the strata management company as agent for the tenants is of no credibility. The email sent from the strata management company to the landlord on November 25, 2019, states the email address of the tenant's representative had been on the owner's email list since 2015.

I find, on a balance of probabilities, the tenant's representative was acting as the landlord to the strata management company in order to sublet the rental unit in August and November of 2019 without the consent of the landlord, breaching a material term of the tenancy. Policy Guideline 19 and section 47 of the Act list subletting as a material breach to the tenancy agreement and this is a reason to end a tenancy.

Thus, I confirm the Notice and dismiss the tenant's Application without leave to reapply.

Section 55 of the Act states:

- 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.

I find that the Notice complies with section 52 of the Act. The effective date of the Notice was December 31, 2019, and the tenant did not vacate the property.

I note that section 55 of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a Notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a Notice to end tenancy that is compliant with the Act.

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 Notice, December 31, 2019.

Therefore, pursuant to section 55 of the Act, I find the landlord is entitled to an Order of Possession effective two days after service.

Conclusion

I grant an Order of Possession to the landlord effective two days after service 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.

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: January 15, 2020

Residential Tenancy Branch