



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RDG PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's 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.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and documentary evidence package via Canada Post Registered Mail on June 30, 2020. Both parties confirmed the tenant also served the landlord with the second submitted documentary evidence on July 3, 2020. Both parties confirmed the landlord served the tenant with their submitted documentary evidence package by posting it to the rental unit door on July 12, 2020. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties are deemed sufficiently served as per section 90 of the Act.

At the outset, both parties confirmed that the tenant had incorrectly named the landlord's agent as the landlord. As such, both parties consented the landlord's agent (company name) being removed from this application.

Issue(s) to be Decided

Is the tenant 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.

This tenancy began on February 1, 2020 on a fixed term tenancy ending on January 31, 2021 and then thereafter on another fixed term or month-to-month basis as per the submitted copy of the signed tenancy agreement dated January 29, 2020. The monthly rent is \$1,850.00 payable on the 1st day of each month and a security deposit of \$925.00 was paid on January 28, 2020.

Both parties confirmed that on June 25, 2020, the landlord served the tenant with the 1 Month Notice dated June 25, 2020. The 1 Month Notice sets out an effective end of tenancy date of July 31, 2020 and that it was being given as:

- 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 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 details of cause listed state:

Tenant has operated an Airbnb business which is in breach of a material term of the tenancy agreement and was not corrected after our warning email dated 8 May, 2020. Owner has received a notice of bylaw violation letter dated 18 June from the Strata on allegation of operating an Airbnb in the unit. This jeopardize the interest of the landlord as the conduct of the tenant is illegal and will also result in high costs of strata fine to the landlord.

[reproduced as written]

During the hearing the landlord clarified that the first and second reason(s) for cause was made in error as there has been no illegal activity by the tenant other than to ignore the local strata bylaws. On this basis, the landlord's first two reasons for cause are dismissed.

The landlord provided affirmed testimony that the tenant has operated a "Airbnb" without the knowledge or consent of the landlord. The landlord stated that this is in direct contravention of the signed tenancy agreement addendum(s) and the strata bylaws. The tenant disputed this claim arguing that there has not been any "Airbnb".

The landlord referred to a memo dated April 22, 2020 in which the landlord's agent noted service of a 24 hour notice of entry to the tenant. The landlord stated that the memo notes, "Someone answered the door but not the tenant, N. A man answered the door and said he is renting the unit by Air-bnb for 1 week and his name is Ben. The tenant disputed this arguing that this was just a friend visiting her for 1 week.

The landlord stated that on May 8, 2020 an email was sent to the tenant from the landlord's agent re: Inspection. It states in part,

This is a notice to you that we've found that you've rented out our property to 3rd party by Airbnb. According to our Addendum to the Tenancy Agreement #3, you cannot sublet the property or do short term rental, so you've breached the Tenancy Agreement...on 22 April, 2020, a gentleman answered the door and said he had rented the unit for 1 week by Airbnb. Therefore, you've violated the Addendum to the Tenancy Agreement clauses #3.2 and #3.3 and have breached the Tenancy Agreement. During the period of Covid-19, Landlord may take action after the state of emergency ends.

The landlord has also referenced an email from the concierge of the building dated June 9, 2020 to the landlord's agent regarding subject: "Unit 603 Air Bnb" in which it states in part,

I am issuing a Short Term Rental Bylaw reminder to Unit 603. A lady came down to the lobby and returned a key for Unit 603, she told me she was staying there as an Air BnB guest. Because this is a confirmed Air BnB,...

The landlord has referenced an email dated June 28, 2020 between the Strata, landlord and tenant which states in part,

On June 6, 2020, a woman guest of unit 603 came down to the concierge and claimed that she was an Airbnb guest.

Today, June 28, 2020, resident renter, N.A. spoke to me about the termination of tenancy notice that received from ... (landlord's agent). She confirmed that there was an Airbnb guest for this unit on June 6th, but she cancelled the transaction...

The tenant disputes this stating that she had cancelled the booking when the woman told her that the unit was not suitable for her use, so there was not actual Airbnb usage. The landlord argued that the booking did take place as the building requires fob access and the rental unit door a key. The landlord pointed out that the woman had a key which she returned to the concierge and as such the booking did take place, but that the

tenant cancelled it afterwards. The tenant confirmed receipt of the email dated June 28, 2020 from the strata and confirmed that as of the date of this hearing has not requested a dispute of the strata's warning of short term rentals.

The tenant also stated that she was using Airbnb to locate a roommate to offset her expense. The tenant clarified that she was using Airbnb to find a potential roommate and that if she did she would then inform the landlord about altering the signed tenancy agreement.

The landlord in support of this claim has submitted:

Copy of handwritten memo dated April 22, 2020 by landlord to tenant
Copy of email dated May 8, 2020 between landlord and tenant
Copy of email dated June 9, 2020 from Concierge to Landlord's Agent
Copy of email dated June 28, 2020 from Strata to landlord and tenant
Copy of Signed Tenancy Agreement dated January 29, 2020
Copy of 3 Addendums to the Tenancy Agreement

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, I accept the undisputed affirmed evidence of both parties that the landlord served the tenant with the 1 month notice dated June 25, 2020 by posting it to the rental unit door as confirmed by both parties.

I find that the landlord has provided sufficient evidence to satisfy me that the tenant operated an Airbnb for which bookings were made on at least 2 occasions based upon the memo dated April 22, 2020 and again based upon the email dated June 9, 2020 from the concierge. The tenant also confirmed in her direct testimony that she was using Airbnb to find a roommate and if successful would notify the landlord subsequently. The landlord also provided undisputed evidence that "subletting" or short term rentals were strictly prohibited as per the signed addendums to the signed tenancy agreement. The tenant confirmed that she was aware of these conditions. The tenant's application to cancel the 1 month notice dated June 25, 2020 is dismissed. As such, the landlord's notice to end tenancy is valid and enforceable.

The landlord is granted an order of possession for the effective end of tenancy date of July 31, 2020.

Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with this 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: July 23, 2020

Residential Tenancy Branch