



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, CNC, RP, RR, FFT**

Introduction

This hearing dealt with an application by the tenants pursuant to the *Residential Tenancy Act* ("the Act") for orders as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause ("1 Month Notice") pursuant to section 47 *Act*;
- an order for the landlord to comply with the *Act*;
- an order for the landlord to repair the rental unit;
- an order for the landlord to reduce rent; and
- for a return of the filing fee pursuant to section 72 of the *Act*.

Both tenants and the landlords appeared at the hearing. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

The tenants acknowledged receipt of the landlords' 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), while both parties acknowledged service of the other's evidentiary packages and the landlords confirmed receipt of the tenants' application for dispute resolution. I find all parties were duly served in accordance with the *Act*.

Issue(s) to be Decided

- Can the tenants cancel the 1 Month Notice?
- Should the landlords be directed to complete repairs on the rental unit and comply with the *Act*?
- Should the landlords be directed to reduce the rent?
- Can the tenants recover the filing fee?

Background and Evidence

A copy of the tenancy agreement submitted into evidence shows this tenancy began on June 15, 2020. It was a fixed-term tenancy set to expire on June 15, 2021. Rent was \$2,000.00 per month and a security deposit of \$1,000.00 paid at the outset of the tenancy continues to be held by the landlords. Following some flooding issues, the landlords agreed to accept \$1,250.00 per month in rent starting in August 2020.

On September 29, 2020 the landlords served the tenants with a 1 Month Notice. The reason cited on the Notice was listed as follows:

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

The tenants have applied to cancel this notice and are seeking relief related to two floods that affected the rental unit. Based on testimony from both parties it was agreed that the floods took place in "late June" 2020 and again in October 2020. A significant amount of detail was presented at the hearing regarding how the property has been affected by the floods. Specifics were given regarding the damaged suffered by the rental unit, which the landlords conceded was significant and required professional remediation.

The landlords argued that he served the tenants with a 1 Month Notice because he suspected they had sublet the rental unit without permission. The property in question is a six-bedroom home rented by the landlords to the tenants named on the application. The tenants acknowledged renting out other bedrooms in the home to people they met online but stated these people were roommates and they argued the landlords were aware these people would be occupying the rental unit. Landlord E.S. testified that he "didn't really question why they (the tenants) wanted a six-bedroom unit" and stated he had only preliminary discussions with the tenants about possibly renting the other bedrooms out. The landlord said he felt uncomfortable with the fact the tenants no longer lived on the property and had allowed unknown persons to live in the home.

The tenants confirmed three other persons began occupying the home from July 1, 2020 onwards. The tenants said they met these people through Craigslist and Marketplace (Facebook) and that these people each paid individual rental amounts to the tenants. The tenants repeatedly argued that the landlords were aware of their intentions to rent out rooms on the property and offered many WhatsApp messages in support of this position. These messages contained in their evidence package document conversations between the landlords and the tenants purporting to highlight

the landlords' knowledge that "roommates" were occupying the suite. In addition, the tenants produced letters from these occupants describing their living arrangement.

Further to an application directing the landlords to comply with the *Act* and for the landlords to repair the unit, the tenants have also applied for a reduction in rent. The tenants are seeking rent to be reduced to zero dollars. The tenants argued that they had not been able to access a large bathroom and one bedroom in the rental unit due to the damage from the flooding and said that the landlords did not expediently address these flooding issues. Further, they described mould growing in the unit, walls that were "wet", flooring that was missing from two rooms and walls that were cut out. The tenants testified that they vacated the property in the first week of July 2020 because of the flooding and have not returned to the property.

The landlords acknowledged some issues had arisen in the suite due to an iron oxide problem and the replacement of the sump pump along with further remediation work. The landlords said company D.S. had been hired to complete the repair work and would be attending to the home "in the next few days" and attributed a delay in repairs works to an insurance disagreement which arose following the flood.

Analysis – 1 Month Notice

The tenants' have applied to cancel a 1 Month Notice for Cause issued by the landlords. The tenants argued the landlords had knowledge of their intention to rent rooms in the home and had a direct understanding of their desire to fill the bedrooms with other occupants. As evidence, the tenants submitted several WhatsApp messages between themselves and the landlord indicating that people were moving into the home. During the hearing the tenants referred to these people as "roommates."

Section 34(1) of the *Act* states, "Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit." At subsection (2) it states, "If a fixed term tenancy agreement has 6 months or more remaining in the term, the landlord must not unreasonably withhold the consent required under subsection (1)."

After having reviewed all evidentiary documentation and having considered the testimony of both parties, I find no indication that the landlords agreed in writing to allow the tenants to assign or sublet the rental unit. As noted above section 34(2) requires that landlords must not unreasonably withhold the required consent if 6 or more months remain in the term of the tenancy agreement. A review of the evidence submitted by the

tenants demonstrates that the occupants A.G., K.D., A.J.M and D.H. all began living in the property in July 2020. There was therefore more than 6 months remaining in the tenancy agreement signed by the parties, however, I note that section 34(2) sees the element of written consent to be “required.”

Section D of *Residential Tenancy Policy Guideline 19* notes, “A tenant may assign or sublet their interest in a tenancy agreement only (emphasis added) with the prior written consent of the landlord. If a tenant assigns or sublets without obtaining the landlord’s prior written consent, the landlord has cause to serve a One Month Notice to End Tenancy under the Legislation.” This *Guideline* continues, “it is up to the original tenant to seek the landlord’s consent...If the original tenant believes that a landlord is unreasonably withholding consent to assign or sublet, the original tenant is able to apply under s.65(1) of the *RTA* for an order of the director that a tenancy agreement be assigned or the rental property be sublet.”

At page 6 of *Guideline #19* it states:

When determining whether a One month Notice to End Tenancy for cause was issued properly, the arbitrator will examine a number of factors including the terms of the tenancy agreement between the original landlord and the tenant, whether the agreement contains terms restricting the number of occupants or the ability of the tenant to have roommates and the intent of the parties. As the facts of each case differ, an arbitrator will have to consider all the evidence by the parties when making a determination.

I find the landlords have sufficiently demonstrated that the tenants failed to receive their written consent to sublet the rental home as is required by section 34(1) of the *Act*. I find that while there may have been some knowledge of the tenants’ actions, there is little indication that the tenants ever occupied the rental unit or had an intention to live in the unit. The evidence the tenants supplied in support of their application included letters from occupants A.G., K.D., A.J.M., and D.H. These letters all note that the property was rented to them by the tenants named on the application. Further, I do not accept the tenants’ testimony that they moved out on a temporary basis while remediation efforts were underway. I find that other occupants moved in and out of the property during this period of and that if the tenants had a true intention to return to the property they could have utilized one of the bedrooms that was available rather than rent it to a third-party. Finally, I find the landlords did not waive their right to a sublet through their actions as a 1 Month Notice was issued just over 3 months from when the tenancy began, indicating they were not comfortable with the present tenancy.

For these reasons, I decline to cancel the landlords' 1 Month Notice and I find this tenancy ends pursuant to the Notice issued on September 29, 2020.

As this tenancy will be ending in accordance with the *Act*, I decline to consider the remainder of the tenants' application.

The tenants must bear the cost of their own filing fee.

Conclusion

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenants. If the tenants do not vacate the rental unit within the two days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

The tenants' applications directing the landlords to comply with the *Act*, for a rent reduction and for repairs to the rental unit are dismissed without leave to reapply.

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: December 17, 2020

Residential Tenancy Branch