



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

On November 1, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. All parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing and evidence package by posting it to the Landlord’s door on November 5, 2020. The Landlord confirmed that she received this package and she did not make any submissions with respect to how this package was served. Based on this undisputed testimony, despite this package being served contrary to Section 89 of the *Act*, as the Landlord did not take issue with this, I am satisfied that the Landlord has been served with the Notice of Hearing and evidence package. As such, I have accepted all of the Tenant’s evidence and it will be considered when rendering this Decision.

The Landlord advised that she did not submit any evidence for consideration on this file.

As stated during the hearing, as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord’s One Month Notice to End Tenancy for Cause, and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 1, 2020, that rent is currently \$1,400.00 per month, and that it is due on the first day of each month. A security deposit of \$700.00 was also paid. The Landlord did not draft a written tenancy agreement as she was not aware that she was required to by law, pursuant to Section 13 of the *Act*.

They also agreed that the Notice was served to the Tenant by posting it on her door on October 28, 2020. The reason the Landlord served the Notice is because the “Tenant has assigned or sublet the rental unit/site without landlord’s written consent.” The Notice indicated that the effective end date of the tenancy was November 30, 2020.

The Landlord advised that the rental unit was rented for residential use, but the Tenant approached her and asked that a receipt for \$300.00 each month be made out to the

Tenant's home-based business. She voluntarily provided the Tenant with these receipts; however, when she showed them to her lawyer, her lawyer discovered that this would invalidate the Landlord's insurance. She advised that she had not issued a warning letter to the Tenant to demand that she stop running her business out of the rental unit. Rather, she stated that she was "fine" with the Tenant running this business out of the rental unit, but it is her position that the change of purpose by way of these business receipts is the problem because it voids her insurance. She advised that she served this Notice because the Tenant has sublet the rental unit to her business.

The Tenant confirmed that this rental unit was rented for residential purposes, but due to the pandemic, she has been required to work from home. She stated that the Landlord gave her the option of residential or business receipts, and she submitted copies of receipts as documentary evidence to demonstrate that the Landlord issued these business receipts in the amount of \$300.00 per month. She advised that this was never a commercial tenancy, that she does not run a business out of the rental unit, that she does not have clients visit the rental unit, that she confirmed with the Regional District that there is no evidence of a business at that address, and that she does not have a business licence. She stated that the Landlord issued her a receipt in the full amount of rent of \$1,400.00 for January 2021 rent.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

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

(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];

I also find it important to note that Policy Guideline # 19 defines a sublet as:

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant.

With respect to the reason on the Notice, the burden is on the Landlord to present persuasive evidence that supports her position for ending the tenancy. Regarding the subletting issue, the Tenant clearly did not sublet the rental unit as she still lives there. Furthermore, while it appears to be the Landlord's belief that the Tenant has sublet a portion of the rental unit to her own business, a sublet as contemplated by the *Act* pertains to a new residential tenancy agreement that has been established with a sub-tenant. Clearly this is not the case here.

Moreover, while the Landlord appears to take issue with the receipts issued for this business purpose, I find it important to note that the Landlord voluntarily and knowingly provided these receipts. In addition, she stated that she was "fine" with the Tenant using the rental unit as a place where she could work from home, but it was only when she realized that her insurance would be invalidated after she provided these receipts is when she discovered that she might have caused herself a problem.

Given that I am not satisfied that the Tenant assigned or sublet the rental unit as contemplated by the *Act*, I am not satisfied that the Landlord has provided compelling or persuasive evidence to justify an end to the tenancy for the reason she chose to check off on the Notice.

As the Tenant was successful in her claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. The Tenant is permitted to withhold this amount from the next month's rent.

Conclusion

Based on the above, I hereby Order that the One Month Notice to End Tenancy for Cause of October 28, 2020 to be cancelled and of no force or effect. The tenancy shall continue until ended in accordance with the *Act*.

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 22, 2021

Residential Tenancy Branch