



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1220621 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, CNC, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on December 04, 2020 (the "Application"). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated November 26, 2020 (the "Notice");
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement; and
- For reimbursement for the filing fee.

The Tenant appeared at the hearing. The Agent for the Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules of Procedure (the "Rules"), I advised the Tenant at the outset that I would consider the dispute of the Notice and dismiss the request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement. This request is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the "Act").

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Agent confirmed receipt of the hearing package. The Agent testified that the Landlord did not receive the Tenant's evidence. The Tenant testified that their evidence was served on the Landlord with the hearing package.

The Tenant confirmed receipt of the Landlord's evidence.

I have reviewed the evidence submitted. The Tenant did not submit evidence showing their evidence was served on the Landlord such as a witness statement confirming what was served, a photo or video of the contents of the package or an acknowledgement by the Landlord of what was served. Given the conflicting testimony about whether the Tenant's evidence was served on the Landlord, and lack of evidence to support the Tenant's testimony, I am not satisfied the Tenant's evidence was served on the Landlord as required by rule 3.14 of the Rules.

Pursuant to rule 3.17 of the Rules, I exclude the Tenant's evidence as I find it would be unfair to consider it when I am not satisfied the Landlord has seen it or could reply to it at the hearing.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the Landlord's documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started January 01, 2015 and is a month-to-month tenancy. Rent is \$982.00 per month "moving to \$996" January 01, 2021. The agreement is signed by the parties. In the box for additional terms there is a notation stating, "no smoking no subletting no roommate". There is no addendum attached and this is indicated on the tenancy agreement.

The Tenant testified as follows. The tenancy agreement in evidence is the agreement that was emailed to the Tenant, but it is not the agreement the Tenant signed. The notation stating, "no smoking no subletting no roommate" was added after the Tenant

signed the agreement. The notation about rent "moving to \$996" was also added after the Tenant signed the agreement. Rent is \$982.00 per month.

The Tenant pointed out that the added notations on the tenancy agreement are not initialled by the parties.

The Agent testified that they did not know if the notations were added to the tenancy agreement after the Tenant signed the agreement because they were not present when the agreement was signed. The Agent testified that they would be surprised if the notations were added. The Agent referred to a signed statement in evidence from J.B. which states in part:

Following that, I explained [Tenant] that she is therefore the only tenant that legally occupied the suite and added on p. 6: "No roommates, No Subletting, and No Smoking". [Tenant] signed the rental agreement and later on that evening she was sent a copy of it.

The Notice was submitted as evidence. The grounds for the Notice are:

1. Unreasonable number of occupants;
2. Breach of a material term;
3. Knowingly gave false information to prospective tenant or purchaser; and
4. Assigned or sublet the rental unit without Landlord's consent.

There was no issue that the Notice was taped to the door of the rental unit November 26, 2020 and received by the Tenant the same day.

The parties provided the following testimony and submissions on the grounds for the Notice.

1. *Unreasonable number of occupants*

The Agent for the Landlord provided the following testimony and submissions. The rental unit is small. The Agent would say the rental unit is 400 or 500 square feet, but the Agent does not know for sure. There are 12 units in the building, all of which are one bedroom or bachelor units. The Landlord has a policy of only allowing one person

or one couple to live in the units. The Landlord specifically noted this in the tenancy agreement. The letter from J.B. shows J.B. confirmed that the Tenant was the only occupant of the rental unit. This is also supported by the email correspondence between the parties which occurred six weeks later when it came to the Landlord's attention that there were two additional people staying in the rental unit. The Landlord does not want the units to be occupied by a large number of people because this requires more maintenance. The Landlord does not want excessive wear and tear on the building. It is not hygienic for three people to be living in the rental unit.

The Tenant provided the following testimony and submissions. There are three adults living in the rental unit. It is a one bedroom unit and is 600 or 700 square feet according to advertisements posted by the Landlord. There is an alcove in the unit that is the same size as the bedroom. The additional two occupants sleep in the alcove. There is also a living room, dining room, kitchen and bathroom. The Landlord's advertisements say the smaller units in the building are suitable for one to two people. The rental unit is one of the larger units and is substantial for three people. The Tenant told J.B. when the tenancy agreement was signed that there were two other people living in the rental unit and J.B. said they did not need to be included on the tenancy agreement. The discussion outlined in J.B.'s statement is not accurate and did not occur.

2. Breach of a material term

I asked the Agent if the Landlord provided the Tenant a breach letter as required by Policy Guideline 8. The Agent referred to a letter in evidence from the Landlord's lawyer to the Tenant. The Agent acknowledged the letter was sent to the Tenant with the Notice.

The Tenant agreed the letter from the Landlord's lawyer was received with the Notice.

3. Knowingly gave false information to prospective tenant or purchaser

The Agent stated that this ground relates to the Tenant telling J.B. that the Tenant was the only person occupying the rental unit. The Agent acknowledged J.B. worked for the Landlord at the time and that the Landlord had purchased the rental unit and were owners of the rental unit at the time.

The Tenant denied that they told J.B. they were the only occupant of the rental unit. The Tenant testified that they told J.B. there were three people living in the rental unit

and asked J.B. if all three needed to be on the tenancy agreement. The Tenant testified that J.B. said all three occupants did not need to be named on the tenancy agreement.

4. Assigned or sublet the rental unit without Landlord's consent

Although the Agent said at first that the Landlord is not convinced the Tenant still lives in the rental unit, when questioned about this further, the Agent acknowledged the Landlord is not taking the position that the Tenant has moved out of the rental unit.

The Tenant testified that they live in the rental unit and have since 2015 when they moved into the rental unit.

Analysis

The Landlord and Tenant disagree about what was said between the Tenant and J.B. when the tenancy agreement was signed and what was written on the tenancy agreement when it was signed. The relevant evidence before me on these points is the affirmed testimony of the Tenant and the signed statement from J.B.

Pursuant to rule 6.6. of the Rules, it is the Landlord who has the onus to prove the grounds for the Notice. Here, proving what was said between the Tenant and J.B. when the tenancy agreement was signed and what was written on the tenancy agreement when it was signed are part of proving the grounds for the Notice given the issues are related.

I prefer the Tenant's testimony over the signed statement of J.B. for the following reasons. The Tenant appeared at the hearing and provided affirmed testimony. By doing so, the Tenant subjected themselves to questioning about their version of events. The Landlord did not have J.B. attend the hearing. I do not have verbal testimony from J.B. before me. I do not have affirmed testimony from J.B. before me. Nor did J.B. attend the hearing to be questioned about their version of events.

In the circumstances, I prefer the affirmed testimony of the Tenant over the signed statement of J.B. I am satisfied it is more likely than not that the Tenant told J.B. about the other two occupants of the rental unit and J.B. did not take issue with this. I am satisfied it is more likely than not that the notations on the tenancy agreement were not there when the Tenant signed the agreement. In this regard, I also note that the added notations are not initialled, which would be expected when additions are made to a from tenancy agreement.

The Notice was issued pursuant to section 47 of the *Act* and the following subsections:

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;

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

(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];

(j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

The Tenant had 10 days from receiving the Notice to dispute it pursuant to section 47(4) of the *Act*. There is no issue that the Tenant received the Notice November 26, 2020. The Application was filed December 04, 2020, within time.

As stated, the Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

1. *Unreasonable number of occupants*

I am not satisfied the Landlord has proven there are an unreasonable number of occupants in the rental unit for the following reasons.

I am satisfied it is more likely than not that the Tenant told J.B. about the other two occupants of the rental unit and J.B. did not take issue with this.

I am not satisfied the tenancy agreement stated “no roommate” at the time the Tenant signed the agreement and therefore am not satisfied this is a term of the tenancy agreement agreed to by the parties.

I am satisfied that three adults living in a one bedroom rental unit is approaching unreasonable. However, I find the size and layout of the rental unit impacts this and I am not satisfied as to the size or layout of the rental unit given the lack of compelling evidence on these points. I have also considered that there is no issue that two adults living in the rental unit would not be unreasonable. I am not satisfied based on the evidence provided that one additional adult results in an unreasonable number of occupants. Further, there is insufficient evidence before me showing the Tenant and two occupants have had a negative impact on the rental unit or building through for example excessive noise, higher than usual wear and tear or increased maintenance costs.

Given the above, I am not satisfied three occupants of the rental unit are an unreasonable number of occupants. I decline to uphold the Notice based on this ground.

2. Breach of a material term

Policy Guideline 8 at page 2 states:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

I am not satisfied the Landlord complied with the above. I do not accept that the letter from the lawyer to the Tenant is sufficient because it was provided with the Notice. A breach letter must be provided prior to a notice to end tenancy being issued as is apparent from the following two requirements:

- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

I decline to uphold the Notice based on this ground.

3. *Knowingly gave false information to prospective tenant or purchaser*

The Landlord relies on the Tenant telling J.B. that the Tenant was the only occupant of the rental unit.

First, I am not satisfied this occurred because I have accepted the Tenant's version of events over J.B.'s version of events.

Second, J.B. was an employee of the Landlord and the Landlord owned the rental unit at the time. Therefore, J.B. was not a prospective purchaser as required by section 47(1)(j) of the *Act*. I find the requirement of "prospective" applies to both a tenant and purchaser as the section is addressing the same issue, a tenant providing false information and therefore obstructing attempts to re-rent or sell the rental unit. This finding is further supported by the reference to a tenant or purchaser "viewing" the residential property. J.B. was not viewing the rental unit. J.B. was at the rental unit as an agent for the Landlord carrying out landlord duties.

The Landlord did not have grounds to issue the Notice pursuant to this section of the *Act*. I decline to uphold the Notice based on this ground.

4. *Assigned or sublet the rental unit without Landlord's consent*

The Agent acknowledged the Landlord is not submitting that the Tenant does not live in the rental unit. The Tenant testified that they continue to live in the rental unit. I am satisfied the Tenant lives in the rental unit and therefore the Tenant has not assigned or sublet the rental unit as these terms are defined and explained in Policy Guideline 19 (see pages 5 to 6).

Given the above, I am not satisfied the Landlord has proven the grounds for the Notice. The Notice is therefore cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenant was successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from one future rent payment as reimbursement for the filing fee.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenant is awarded reimbursement for the \$100.00 filing fee. The Tenant can deduct \$100.00 from one future rent payment as reimbursement for the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 08, 2021

Residential Tenancy Branch