



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KEPLAND HOMES LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

On March 4, 2021, 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”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with C.E. attending as his advocate. A.F. attended the hearing as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance, with the exception of A.F., provided a solemn affirmation.

C.E. advised that the Landlord was served with the Notice of Hearing package and some evidence by registered mail on March 11, 2021. A.F. confirmed that the Landlord received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been duly served with the Notice of Hearing package and some evidence.

C.E. also advised that additional evidence was served to the Landlord by hand to the office of the Landlord’s law firm on June 8, 2021. A.F. confirmed that the Landlord received this evidence; however, she submitted that this evidence was late and there

was not enough time to appropriately respond to it. As the Tenant's evidence was not served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I am satisfied that this additional evidence is late. As such, I have excluded this additional evidence and will not consider it when rendering this Decision. Only the Tenant's evidence that was served with the Notice of Hearing package will be accepted and considered when rendering this Decision.

A.F. advised that the Tenant was served with the Landlord's evidence by Xpresspost on May 28, 2021 and the Tenant confirmed receiving this evidence on June 3, 2021. Based on this undisputed testimony, I am satisfied that the Landlord's evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure. As such, I have accepted this evidence and will consider it when rendering this Decision.

At the outset of the hearing, C.E. requested an adjournment and stated that it was because the Tenant did not have an opportunity to obtain legal counsel. Furthermore, the Tenant had an ongoing custody battle with a person that provided an affidavit to the Landlord and she suggested that there were statements in the affidavit that were untrue.

A.F. was not prepared to acknowledge the Tenant's request as the Landlord's evidence was served in accordance with the Rules of Procedure and this provided the Tenant with a sufficient opportunity to respond. As such, there is no prejudice to the Tenant.

Rule 7.9 of the Rules of Procedure provides the applicable criteria for the granting of an adjournment. I note that the Tenant had ample time to obtain legal counsel. Moreover, the Tenant would have an opportunity during the hearing to speak to any alleged inconsistencies within the affidavits. As this hearing pertained to a notice to end the tenancy, and as the criteria for an adjournment was not satisfactorily met by the Tenant, I determined that adjourning the hearing would be prejudicial to the Landlord. As such, I did not allow the Tenant's request for an adjournment. Furthermore, as will be outlined in this Decision below, the statements contained within the affidavits were not considered when rendering this Decision, in any event.

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 most current tenancy agreement started on September 1, 2015, that rent was currently established at \$700.00 per month, and that it was due on the first day of each month. A security deposit of \$350.00 and a pet damage deposit of \$350.00 were also paid to the Landlord. A copy of the tenancy agreement was submitted as documentary evidence.

A.F. advised that the Notice was served to the Tenant by being posted to the Tenant's door on February 25, 2021 and the Tenant clearly received this as the Notice was disputed within the required 10-day time frame. The reasons the Landlord served the Notice are due to the following:

- The Tenant is repeatedly late paying rent.
- The Tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord, and/or put the landlord's property at significant risk.
- The Tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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

- 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 of the *Act*.

The Notice indicated that the effective end date of the tenancy was April 7, 2021.

Submissions were made by both parties with respect to the different reasons on the Notice. However, only the submissions with respect to the reason of the Tenant has assigned or sublet the rental unit without first obtaining the Landlord's written consent will be outlined and addressed in this Decision.

A.F. submitted that the Landlord first discovered in February 2021 that the Tenant brought a trailer onto the property at some point, and then moved into it. The Tenant then rented the rental unit to multiple, different people without the Landlord's knowledge or written consent. She referenced pictures and affidavits, submitted as documentary evidence, to support the Landlord's position that the Tenant assigned or sublet the rental unit without first obtaining the Landlord's written consent.

The Tenant acknowledged that he is not living in the rental unit but is living in a trailer on the property. He confirmed that he moved into the trailer and that he allowed other people to live in the rental unit by renting it out to them. However, he stated that these were roommates and that the rental unit was not sublet to them, although they dispute this now. He confirmed that he collected rent from these people and that he served one of these people with a One Month Notice to End Tenancy for Cause. Furthermore, he stated that he attended a previous Dispute Resolution hearing pertaining to this notice, that was disputed by the Tenant, and that he was unsuccessful in obtaining an Order of Possession as his evidence was not deemed sufficient for ending the tenancy.

C.E. referenced Policy Guideline # 19 and stated that there is confusion between roommates and a sublet. It is her position that this is not a sublet as the Tenant still lives on the property.

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.

Furthermore, this Policy Guideline states the following regarding occupants or roommates:

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out

a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act. The use of the word 'sublet' can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement. 'Sublet' has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the Act, this is not considered to be a sublet. If the original tenant transfers their rights to a subtenant under a sublease agreement and vacates the rental unit, a landlord/tenant relationship is created and the provisions of the Act apply to the parties. If there is no landlord/tenant relationship, the Act does not apply. Roommates and landlords may wish to enter into a separate tenancy agreement to establish a landlord/tenant relationship between them or to add the roommate to the existing tenancy agreement in order to provide protection to all parties under the legislation.

With respect to this reason on the Notice, the consistent and undisputed evidence is that the Tenant moved out of the rental unit and into a trailer on the property. I find it important to note that a rental unit is defined by the *Act* as the living accommodation rented or intended to be rented to the Tenant. In my view, the rental unit is the building that was rented to the Tenant for living accommodation. I do not find that the trailer, or any other means of accommodation that were moved onto the property after the tenancy commenced, would be considered part of the rental unit that was indicated on the tenancy agreement. While C.E. is attempting to portray a scenario where the Tenant can still stay on the property and still be considered as occupying the rental unit, I do not agree with this position at all as it does not make logical sense.

The clear evidence is that the rental unit was the accommodation that was rented or intended to be rented to the Tenant, as per the tenancy agreement, and that this was the house on the property. The Tenant admittedly moved out of this rental unit at some point in time. In addition, he then took steps to rent out the rental unit to other people. While it is his position that these people were his roommates, I do not find that this position makes any rational sense as he no longer lived in the rental unit. It is not clear to me how he could be roommates with people that he did not share accommodation with.

Even the Policy Guideline that C.E. referenced states that if the Tenant remains in the rental unit and rents out a room or space within that rental unit, the third party would be considered an occupant or roommate, with no rights or responsibilities under the *Act*. As

the Tenant did not remain in the rental unit, the people that he rented the rental unit to could not be viewed as occupants or roommates.

Furthermore, the Tenant admitted that he served one of these people with a One Month Notice to End Tenancy for Cause, and a Decision was rendered in which he was not successful due to his lack of compelling evidence. If the Tenant believed these other people were simply roommates or occupants, it does not make sense to me why he would serve this type of notice if it was his belief that he was not a Landlord under the *Act*. Moreover, the Tenant did not state that the reason he was unsuccessful in this previous hearing was because it was determined that there was no Landlord/Tenant relationship between him and the person that he served the notice to. Rather, the basis of why he was not successful was because he did not sufficiently justify the reasons he served the Notice.

When taking the above into consideration, it is clear to me that these other people that the Tenant rented the rental unit to were not occupants or roommates. Thus, a Landlord/Tenant relationship was clearly established by the Tenant. As the Tenant plainly vacated the rental unit and then re-rented it to other people, I am satisfied that he sublet the rental unit. Furthermore, as the undisputed evidence is that he did so without the Landlord's written consent, I find that this alone is sufficient evidence to justify service of the Notice. As a result, I dismiss the Tenant's Application in its entirety.

Pursuant to Section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession that takes effect on **June 30, 2021 at 1:00 PM** after service of this Order on the Tenant. The Landlord will be given a formal Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit after service of the Order, the Landlord may enforce this Order in the Supreme Court of British Columbia.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

The Tenant's Application is dismissed without leave to reapply and the Landlord is provided with a formal copy of an Order of Possession effective on **June 30, 2021 at 1:00 PM** after service on the Tenant. Should the Tenant or any occupant on the premises 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: June 16, 2021

Residential Tenancy Branch