



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ANHART COMMUNITY HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on March 15, 2021 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated March 08, 2021 (the “Notice”).

J.C. appeared at the hearing for the Tenant. G.W. appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

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

G.W. confirmed receipt of the hearing package. G.W. testified that the Landlord did not receive evidence from the Tenant.

J.C. testified that the Tenant’s evidence was served on the Landlord.

Pursuant to rule 3.5 of the Rules, the Tenant had to prove service of their evidence at the hearing. Given the conflicting testimony about service of the Tenant’s evidence, and lack of documentary evidence to show the Tenant’s evidence was served, I was not satisfied the Tenant’s evidence was served.

Pursuant to rule 3.17 of the Rules, I heard the parties on whether the Tenant’s evidence should be admitted or excluded. G.W. submitted that the evidence should be excluded. J.C. did not make relevant submissions. I excluded the Tenant’s evidence as I found it

would be unfair to consider it when I was not satisfied it had been served on the Landlord and therefore not satisfied the Landlord had seen it or could respond to it.

J.C. testified that the Tenant received some of the Landlord's evidence including:

- The Notice
- Provincial Court papers
- Emails from February 28, 2021 at 6:04 pm and March 02, 2021 at 3:38 pm
- An email chain from February 12 and 13, 2021

G.W. testified that all of the Landlord's evidence was served by posting it on the door of the rental unit and by email.

Pursuant to rule 3.16 of the Rules, the Landlord had to prove service of their evidence at the hearing. Given the conflicting testimony about service, and lack of evidence to support G.W.'s testimony, I was not satisfied of service except of the documents J.C. acknowledged receiving.

Pursuant to rule 3.17 of the Rules, I heard the parties on whether the Landlord's evidence should be admitted or excluded. G.W. submitted that the evidence should be admitted. J.C. submitted that the evidence should be excluded. I excluded the Landlord's evidence, other than the evidence J.C. acknowledged receiving, as I found it would be unfair to consider it when I was not satisfied it had been served and therefore was not satisfied the Tenant, or an agent for the Tenant, had seen it or could respond to it. I note that I have admitted the written tenancy agreement given it was signed by the Tenant and therefore the Tenant would have been aware of it regardless of service.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence and the 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?

Background and Evidence

A written tenancy agreement was submitted as evidence. The agreement is between the Landlord and Tenant. The tenancy started March 31, 2020 and is a month-to-month tenancy. Rent is \$450.00 per month due on the first day of each month. The Tenant paid a \$250.00 security deposit. The agreement is signed by both parties. The agreement has an addendum.

The Application originally named J.C as a tenant. It is my understanding that both J.C. and A.P. are living in the rental unit and that the Tenant is incarcerated. At the hearing, G.W. testified that J.C. is a visitor to the rental unit and A.P. is an occupant of the rental unit. J.C. testified that she is a tenant of the rental unit, has never seen a tenancy agreement and tried to discuss living in the rental unit and paying rent with the Landlord. J.C. testified that A.P. is moving out of the rental unit soon. J.C. said she guesses A.P. is an occupant of the rental unit but does not know.

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

1. Unreasonable number of occupants
2. Repeated late payment of rent
3. Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonable disturbed another occupant or the Landlord and put the Landlord's property at significant risk
4. End of employment
5. Illegal activity
6. Tenant has assigned or sublet the rental unit without written consent

The Details of Cause state:

- 1- Email from other tenant on Feb 12th telling us that [Tenant], the actual tenant went to jail and other people are using his nit to run his drug business.
- 2 - email from oher tenant on Feb 12th complaining about loud music excessive, drug business;
- 3 - Shift report feb 28th unreasonable number of guests

4 - Shift report March 02, high traffic of people in this room during the night. The tenancy agreement is clear that tenants are not allowed to sell drugs or have weapons, there is a Court sentence that this tenant went to jail for weapon possession. Please see attached.

5 - This is an SRO and it's not supposed to have more than one person living in the unit; the tenant went to jail and there are 2 non tenants using the unit.

(errors in original)

G.W. testified that the Notice was attached to the door of the rental unit March 08, 2021. J.C. acknowledged receipt of the Notice March 08 or 09, 2021.

G.W. testified as follows in relation to the grounds for the Notice.

After the Tenant was incarcerated, someone else moved into the rental unit and the unit has been used as a major centre for drug business. The Landlord does not know who moved into the rental unit, but it is logical that it was A.P. A.P. is involved in illegal activity.

The ground about end of employment was an error.

There is an unreasonable number of occupants in the rental unit.

There has been loud music coming from the rental unit. People have been coming in and out of the rental unit. The occupants of the rental unit have disturbed other's quiet enjoyment. These issues have also caused a significant interference. The illegal activity is also affecting the quiet enjoyment of others.

People are coming and going during non-visitor hours. People are coming to the rental unit at many hours of the day and night. Short transactions are occurring at the door of the rental unit. Money is being provided to someone inside the unit and people are receiving small packages. This relates to the unreasonable number of occupants ground in the Notice. The people are not staying at the rental unit.

The tenancy agreement does not address the permitted number of occupants in the rental unit. A.P. and someone else are living in the rental unit. No rent has been received since December of 2020.

Police have attended the rental unit. Others are using the unit for illegal business and are harming the building.

J.C. testified as follows. She lives at the rental unit. There is no drug dealing occurring at the rental unit. Rent was paid by the Tenant in advance up until April and has also been paid recently. There may be some things happening in the rental unit; however, it is no different than anyone else in the building. Everything seems to be okay.

The admissible documentary evidence before me includes:

- The Notice
- The tenancy agreement
- An email from March 02, 2021 at 3:38 pm about two males coming out of someone's room around 11:30 pm, going to the rental unit and then leaving the building
- Provincial Court papers showing the Tenant's sentence
- An email from February 28, 2021 at 6:04 pm about other tenants and a non-tenant going to the door of the rental unit and nobody opening the door. The email also states that police attended the rental unit.
- An email chain from February 12 and 13, 2021 which includes complaints from an unknown person about the rental unit and A.P.

Analysis

In relation to who is a tenant of the rental unit, I find that the Tenant is the only tenant of the rental unit as this is supported by the tenancy agreement and Notice, both of which only name the Tenant. I find that A.P. and J.C. are either visitors or occupants of the rental unit and not tenants of the rental unit. Therefore, I have removed J.C. from the Application.

I have not considered the ground in the Notice related to employment as G.W. acknowledged this was an error.

The Notice was issued pursuant to section 47(1) of the *Residential Tenancy Act* (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...

- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property...
 - (ii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) 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, or
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord...
- (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]...

The Tenant had 10 days from receiving the Notice to dispute it pursuant to section 47(4) of the *Act*. I am satisfied based on the testimony of both parties that the Tenant, or an agent for the Tenant, received the Notice March 08 or 09, 2021. The dispute was filed March 15, 2021, within time whether the Tenant, or an agent for the Tenant, received the Notice March 08 or 09, 2021.

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.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I note at the outset that I place no weight on the email chain from February 12 and 13, 2021 given it is from an unknown individual. I do not accept that the Landlord can rely on an email without disclosing who wrote the email as there is no way for me to know who provided the information and there is no way for the Tenant to know who provided the information. The Tenant cannot be expected to adequately respond or address information when the Tenant does not know who provided the information. Nor can I adequately assess the reliability or credibility of information when I do not know who provide the information.

I decline to uphold the Notice based on repeated late payment of rent for the following reasons. The Details of Cause do not state anything about late rent payments. There is no admissible documentary evidence before me about late rent payments.

I decline to uphold the Notice based on unreasonable number of occupants for the following reasons. The Landlord seemed to base this ground in part on numerous people coming and going from the rental unit. This ground is not about an unreasonable number of visitors, it is about an unreasonable number of occupants meaning people living in the rental unit. I am satisfied J.C. and A.P. are living in the rental unit as J.C. acknowledged this. I am not satisfied anyone else is living in the rental unit as there is not compelling evidence of this before me. The tenancy agreement does not limit the number of occupants the Tenant can have in the rental unit. The Landlord has not provided compelling reasons in the Details for Cause as to why the number of occupants in the rental unit is unreasonable. G.W. did not provide compelling testimony, or a compelling explanation, as to why the number of occupants in the rental unit is unreasonable.

I decline to uphold the Notice based on the Tenant assigning or subletting the rental unit for the following reasons. Policy Guideline 19 states:

Assignment is the act of **permanently transferring a tenant's rights** under a tenancy agreement to a third party, who becomes the new tenant of the original landlord...

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. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement...

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.**

(emphasis added)

Based on the evidence provided, I find that the Tenant has allowed J.C. and A.P. to live in the rental unit with the Tenant. I find J.C. and A.P. are the equivalent of roommates of the Tenant and are occupants of the rental unit. I find based on the evidence provided that the only reason the Tenant is not living in the rental unit at the present time is because the Tenant has been incarcerated. I do not accept that the Tenant being incarcerated is the equivalent of the Tenant moving out of the rental unit. It is my understanding from comments made by J.C. during the hearing that the Tenant intends to return to the rental unit and live in the rental unit at the end of their incarceration.

There is no compelling evidence before me to support that the Tenant has permanently transferred their rights under the tenancy agreement to A.P. or J.C. Nor am I satisfied the Tenant has moved out of the rental unit and granted A.P. or J.C. exclusive occupancy of the rental unit as contemplated by the meaning of sublet.

I decline to uphold the Notice on the remaining grounds related to significant interference, unreasonable disturbance, putting the Landlord's property at significant risk or illegal activity for the following reasons. The only admissible documentary evidence submitted to prove these grounds is an email from March 02, 2021 about two males coming out of someone's room, going to the rental unit and then leaving the building and an email from February 28, 2021 about other tenants and a non-tenant going to the door of the rental unit and nobody opening the door. The February 28, 2021 email also states that police attended the rental unit. Neither of the emails are compelling evidence of the Tenant, or someone the Tenant has allowed on the property, causing a significant interference, causing an unreasonable disturbance, putting the Landlord's property at significant risk or engaging in illegal activity. The emails only relate to the behaviour of other tenants or non-tenants and do not outline any concerning behaviour on the part of the Tenant or someone the Tenant has allowed on the property. In relation to the police attendance, there is no information about why the police attended or what occurred in this regard.

In the circumstances, I find the Landlord has failed to provide compelling evidence to prove the grounds listed in the Notice. Therefore, I cancel the Notice. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will 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 *Act*.

Dated: June 30, 2021

Residential Tenancy Branch