



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0911306 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on February 24, 2021, in which the Tenant sought an Order that the Landlord comply with the *Residential Tenancy Act* (the "Act"), the *Residential Tenancy Regulation*, and/or the residential tenancy agreement as well as recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for teleconference at 11:00 a.m. on June 1, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. Both parties were also assisted by legal counsel.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Date and Delivery of Decision

The hearing of the Tenant's Application concluded on June 1, 2021. This Decision was rendered on July 9, 2021. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30 day period.

Issues to be Decided

1. Is the Tenant entitled to an Order that the Landlord comply with the *Residential Tenancy Act* (the "Act"), the *Residential Tenancy Regulation*, and/or the residential tenancy agreement?
2. Should the Tenant recover the filing fee?

Background and Evidence

A copy of the residential tenancy agreement, signed May 16, 2019, was provided in evidence. The agreement provided that the tenancy began June 1, 2019. The Tenant rents three commercial units on the main floor and one unit above, which is a residential unit and the subject of this dispute. All of the leases were for five years.

Counsel confirmed that there has been a dispute with respect to the commercial leases, and the residential tenancy; the former of which are the subject of proceedings in the B.C. Supreme Court.

The Tenant submits that he is the head Tenant and a sub Landlord as he has entered into a subtenancy for the residential unit. The Tenant uses a small portion of the residential area for his office and the maintenance of the commercial units downstairs. The Tenant says this arrangement was done with the oral permission of the Landlord.

The issues giving rise to the claim before me relate to the Tenant's claim that the Landlord entered into a tenancy directly with his subtenant, thereby denying the Tenant income from the sub-tenancy. The Tenant requested an Order that he be substituted as the Landlord in the residential tenancy agreement entered into by the Landlord with the subtenant.

The Tenant alleges he has suffered financial loss from the loss of income from the subtenancy, as well as due to the fact he furnished the entire apartment for the subtenant.

Counsel further noted that the Landlord did not end the tenancy in accordance with the *Act* when he entered into a tenancy with the subtenant directly.

In response to the Tenant's submissions, counsel for the Landlord submitted that the Tenant entered into this alleged subtenancy without the Landlord's knowledge and consent. Counsel confirmed that the Landlord became aware the Tenant had rented the unit out to another person as of March of 2020, yet he did not issue a 1 Month Notice to End Tenancy for Cause.

The Landlord issued a 10 Day Notice for Unpaid Rent or Utilities on March 7, 2020. This was served by text and email and posted to the rental unit door on March 8, 2020. The Landlord did not apply for an Order of Possession based on the undisputed 10 Day Notice.

The Landlord then entered into an agreement directly with the subtenant.

The Landlord stated that, contrary to the Tenant's counsel's submissions, the Tenant did not improve the property and did not provide any new furnishings.

Analysis

The Tenant seeks an order confirming the subtenancy he entered into with a third party as well as substituting his name as Landlord in the tenancy agreement entered into by the Landlord with this third party.

Guidance can be found in *Residential Tenancy Branch Policy Guideline 19—Assignment and Sublet* which provides in part as follows:

C. SUBLETTING

Sublets as contemplated by the *Residential Tenancy Act*. 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.

Landlord is defined in the RTA as: "landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Unlike assignment, a sublet is temporary. In order for a sublease to exist, the original tenant must retain an interest in the tenancy. While the sublease can be very similar to the original tenancy agreement, the sublease must be for a shorter period of time than the original fixed-term tenancy agreement – even just one day shorter.

The situation with month-to-month (periodic) tenancy agreements is not as clear as the Act does not specifically refer to periodic tenancies, nor does it specifically exclude them. In the case of a periodic tenancy, there would need to be an agreement that the sublet continues on a month-to-month basis, less one day, in order to preserve the original tenant's interest in the tenancy.

The sub-tenant's contractual rights and obligations are as set out in the sublease agreement. Generally speaking, the sub-tenant does not acquire the full rights provided to tenants under the Act. For example, if the landlord ends the tenancy with the original tenant, the tenancy ends for the sub-tenant as well. The sub-tenant would not be able to dispute the landlord ending the tenancy with the original tenant; it would be up to the original tenant to dispute the notice.

Similarly, the original tenant/landlord also does not have all the responsibilities that a landlord has under the Act. For example, while all landlords have a duty to provide and maintain the rental premises, only the original landlord has the right to make repairs. The original tenant does not have the right to make repairs as the landlord to a subtenant. A subtenant may ask the original tenant to make repairs and may apply for a rent reduction if the repairs are not completed within a reasonable time frame. However, the original tenant would be required to request the repairs to be completed by the original landlord and remains responsible to the original landlord for payment of rent as set out in their tenancy agreement.

While the RTA does not specify what the rights and responsibilities of the original tenant and subtenant are, the common law, pursuant to s. 91 of the RTA, may apply. In the event of uncertainty around the rights and responsibilities of parties to a sublease agreement, an arbitrator will consider the individual circumstances and evidence of each case in making a determination.

The sub-tenant typically pays rent to the original tenant; but even if he or she fails to do so, the original tenant's responsibility to pay rent to the landlord is unaffected and the original tenant can be evicted if rent is not paid. Again, it should be noted that there is no contractual relationship between the original landlord and the sub-tenant. In the event of a dispute, the sub-tenant may apply for dispute resolution against the original tenant, but likely not the original landlord, unless it can be shown there has been a tenancy created between the landlord and sub-tenant.

Where an individual agrees to sublet a tenancy for the full period of the tenancy, and does not reserve some period of time at the end of the sublease, the agreement likely amounts in law to an assignment of the tenancy rather than a sublease; an arbitrator may make that determination in a hearing.

Example: In month four of a twelve month fixed-term tenancy agreement, John (with the written consent of the landlord) sublets his tenancy in a rental unit to Susan for six months because he is going overseas to work. The agreement between John and Susan states that at month 11, John will return, Susan will vacate the rental unit, and John will re-occupy it (although the parties could agree that Susan stays on as an occupant/roommate). During the six month sublet, Susan pays rent to John, who is responsible for paying rent to the original landlord. The landlord would deal with John if any issues arose with the unit.

The Tenant alleges he had the Landlord's oral permission to sublet the rental premises. The Landlord claims no such permission was granted.

A copy of the residential tenancy agreement was provided in evidence; the agreement makes no mention of the Tenant's permission to sublet. Similarly, even though the parties included an addendum to the agreement, the addendum did not make any provision for such an agreement to sublet.

The agreement further provided as follows:

5. The terms of the Tenancy Agreement clearly stipulated that, "any change or addition to this tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant. If a change is not agreed to in writing, it not initialized by both the landlord and the tenant or is unconscionable, it is not enforceable."

On balance, I find the Tenant has failed to prove he had the Landlord's permission to enter into a subtenancy. The parties specifically agreed that any changes or additions to the tenancy agreement *must* be in writing. The undisputed evidence before me is that this alleged agreement to sublet was not reduced to writing.

By vacating the rental unit and allowing a third party to move into the unit, I find the Tenant ended his tenancy pursuant to section 44(1)(d) of the *Act*.

The Tenant alleges he furnished the rental unit for his subtenant; this was disputed by the Landlord. The Tenant failed to submit any evidence, aside from his testimony, to support a finding that the unit was furnished or that improvements made by the Tenant. Without corroborating evidence to support the Tenant's assertions, I find the Tenant has failed to meet the burden of proving that he improved the rental unit in such a way.

I therefore dismiss the Tenant's claim without leave to reapply.

Conclusion

The Tenant's claim for an Order that the Landlord comply with the *Act*, the *Regulations*, or the residential tenancy agreement is dismissed without leave to reapply. Having been unsuccessful in his claim, his request for recovery of the filing fee is similarly dismissed.

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: July 9, 2021

Residential Tenancy Branch