



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Valley Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

Both tenants and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions. The parties agree that evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

At the commencement of the hearing, I advised the parties that the Rules of Procedure require that multiple applications contained in a single application must be related. The parties agree that the primary application deals with a notice to end the tenancy, and I dismissed the tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement with leave to reapply.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on November 15, 2018 and reverted to a month-to-month tenancy after November 30, 2019, and the

tenants still reside in the rental unit. Rent in the amount of \$1,500.00 is payable on the 1st day of each month, however the landlord's agent is not sure if there are any rental arrears. On November 1, 2018 the landlord collected a security deposit from the tenants in the amount of \$750.00, as well as a pet damage deposit in the amount of \$750.00 on December 1, 2018, both of which are still held in trust by the landlord. The rental unit is a single family home, and the tenants have provided a copy of the tenancy agreement for this hearing.

The landlord's agent further testified that on May 10, 2021 the tenants were served with a One Month Notice to End Tenancy for Cause by registered mail. A copy of the Notice has been provided for this hearing and it is dated May 10, 2021 and contains an effective date of vacancy of June 30, 2021. The reason for issuing it states: "Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent."

The landlord's agent conducted an inspection in January, 2021 and noticed additional occupants, which is in violation of 2 clauses in the tenancy agreement. The first is clause #14 specifying no additional long-term guests for more than 15 days in a 60 day period. Clause #23 specifies no additional residents who are not on the application to rent without prior approval of the landlord. The tenant told the landlord's agent that her mother was living there, and the landlord's agent told the tenant to follow the rules and get approval. After 6 months no application for approval had been submitted, which is needed to process a basic application so the owner would know and for insurance purposes. Repeated warnings were given when rent was paid, and the landlord's agent testified that the landlord does not know who the person living there is. Previously, the tenants got a dog without permission, which is why the landlord needs to enforce the rules. The landlord waited until May before issuing the notice to end the tenancy.

The tenants have paid rent since the Notice was served, for which the landlord gave receipts stating that the money was accepted for Use and Occupancy only.

The first tenant (KB) testified that the tenants did not receive any written notice about making an application to have her mother live in the rental unit, and does not recall if the landlord's agent mentioned it during the inspection in January, 2021. The tenant is her mother's caretaker. At the beginning of the tenancy there were 3 people, including the tenant's brother-in-law who lived there for a year. The tenant didn't know that moving her mother in after the brother-in-law moved out was a problem. There were 3 people then and 3 people now and the tenants have lived in the rental unit the entire time.

The tenant also testified that it's the landlord's word against the tenant's, and the tenant would be happy to fill out an application. This appears to be an allegation of breach of a

material term. The definition of sublet is that the original tenant moves out and allows exclusive occupancy to another person, but the tenants still live there. It is not an assignment either. The tenant's mother does not pay any rent.

The second tenant (MB) testified that the other tenant's mother does not pay rent, and it is not a sublet; she cannot take care of herself. The tenant's brother was living there and the landlord was aware, and now the arrangement has been switched out for the ailing mother, who has been living in the rental unit for about a year.

SUBMISSIONS OF THE LANDLORD:

The landlord's agent reminded the tenants in January, 2021 to go through the application process and it wouldn't be deep, just a basic form. The first warning was during the January, 2021 inspection. The next time was when the landlord's agent saw the tenants in the office.

The landlord's agent has no authority to settle this dispute.

SUBMISSIONS OF THE TENANTS:

The tenants have only spoke to the landlord's agent during a hearing in April, 2021. She doesn't answer emails. The front desk person has never asked the tenants to put in an application. The tenants pay rent at the front desk, usually to the receptionist and the tenants deny that the property manager gave warnings verbally.

The second tenant submits that he has never seen the landlord's agent; he pays the rent and no one has ever mentioned it.

Analysis

Firstly, I find it very unfortunate that a landlord's agent attends a hearing without any authority to settle a dispute.

I have reviewed the tenancy agreement and the Addendum contains the 2 clauses described by the landlord's agent:

14. NO ADDITIONAL LONG-TERM GUESTS

There will be no additional long-term guests or occupants permitted without the written consent of the Landlord or Landlord's agent, (VR). A long-term guest is considered to be anyone staying more than fifteen (15) days within any sixty (60)

day period, or as described in any governing bylaw for a strata complex (if applicable).

23. OCCUPANCY

The tenants are aware they may not have any additional residents living in the home who are not listed on the original residential tenancy application without receiving prior written approval from the Landlord.

I also refer to Residential Tenancy Policy Guideline #19 – Assignment and Sublet, which states, in part:

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 subtenant 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.

There is no evidence that the tenant's mother living on the property with the tenants constitutes either an assignment or a sublet; the tenant's mother pays no rent and the rights under the tenancy agreement have not been transferred to the tenant's mother. I agree with the tenant that perhaps the landlord alleges a breach of a material term of the tenancy agreement, but no written notice to correct the breach has been provided to the tenants. Further, the tenants deny even talking about the issue with the landlord's agent, and I'm not satisfied that there were any such conversations.

In the circumstances, I find that the tenants have not assigned or sublet, and I cancel the One Month Notice to End Tenancy for Cause.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in that amount in favour of the tenants and I order that the tenants be permitted to reduce rent for a future month as full recovery, or may enforce the order in the Provincial Court of British Columbia, Small Claims division as a judgment.

This order is final and binding and may be enforced.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated May 10, 2021 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants may reduce rent for a future month by that amount or may otherwise recover it.

The tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

This order is final and binding and may be enforced.

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: September 10, 2021

Residential Tenancy Branch