



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Martin Fung BC Properties Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated July 20, 2021 ("One Month Notice").

An Agent for the Landlord, Y.H. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Agent and gave her an opportunity to ask questions about it.

The Tenant was provided with a copy of the Notice of a Dispute Resolution Hearing on August 17, 2021; however, the Tenant did not attend the teleconference hearing scheduled for December 3, 2021 at 9:30 a.m. (Pacific Time). The phone line remained open for over 25 minutes and was monitored throughout this time. The only person to call into the hearing was the Respondent Landlord's Agent, who indicated that she was ready to proceed.

Rule 7.1 of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules") states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Agent and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 9:30 a.m. on December 3, 2021, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for over 25 minutes; however, neither the Applicant nor an agent acting on his behalf

attended to provide any evidence or testimony for my consideration.

During the hearing the Agent was given the opportunity to provide her evidence orally and respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Rules; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and the Agent confirmed her address in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Agent that she was not allowed to record the hearing and that anyone who was recording it was required to stop immediately. The Agent affirmed that she was not recording the hearing.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires an arbitrator to consider whether the landlord is entitled to an order of possession. This is the case if the tenant's application is dismissed, and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Agent confirmed that the fixed-term tenancy began on April 20, 2020 and ran to April 30, 2021, and then operated on a month-to-month basis. She said that the Tenant is required by the tenancy agreement to pay the Landlord a monthly rent of \$1,400.00, due on the first day of each month. The Agent confirmed that the Tenant paid the Landlord a security deposit of \$700.00, and no pet damage deposit.

The Landlord submitted a copy of the One Month Notice, which was signed and dated

July 20, 2021, and which has the rental unit address. It was served to the Tenant by posting it on the rental unit door on July 20, 2021. The One Month Notice has an effective vacancy date of August 31, 2021, and it was served on the grounds that the Tenant has assigned or sublet the rental unit without the Landlord's written consent.

In the hearing, I asked the Agent why I should confirm the One Month Notice, rather than cancel it, as the Tenant has requested. The Agent said:

Because [the Tenant] has sublet his basement unit to the Airbnb platform, which the Landlord has never permitted. Since I detected this behaviour on July 20, he refused to talk to me, and his cheques were returned without payment.

The Agent noted from the Landlord's evidentiary submissions, that the City has fined the Landlord for allowing "Illegal Short Term Rental Activity – [residential property]". The Landlord received a \$500.00 City By-Law Violation ticket for this.

The Landlord also submitted copies of AirBnB listings of the rental unit for \$89.00 a night, plus cleaning, service fees, and taxes. However, the City's correspondence indicated that the Tenant did not have a business licence for this practice.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

I find the Landlord has established sufficient cause, pursuant to Section 47 of the Act, to end the tenancy. The Tenant has assigned or sublet the rental unit without the Landlord's written consent, and as such, the Landlord has cause to end the tenancy pursuant to section 47 (1) (i) of the Act.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act. Given the above, and **pursuant to section 55** of the Act, I grant the Landlord an **Order of Possession, effective two days** after it is served to the Tenant, since the effective vacancy date of the One Month Notice has passed.

The Parties have another cross-application hearing scheduled for December 20, 2021; however, that has been cancelled. The claims in those applications are no longer valid, given the order of possession granted to the Landlord in this proceeding. The Landlord

may re-apply for compensation from the Tenant for any unpaid rent and other compensation due to the Landlord.

Conclusion

The Tenant is unsuccessful in his Application. The Landlord provided sufficient evidence to meet their burden of proof on a balance of probabilities that the Tenant assigned or sublet the rental unit without the Landlord's written consent, contrary to section 47 (1) (i) of the Act.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the **Supreme Court of British Columbia** and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: December 03, 2021

Residential Tenancy Branch