



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS, CNR, OLC, DRI, FFT // CNC, FFT // OPC, FFL // OPR-DR, MNR-DR, FFL,

Introduction

This hearing dealt with four applications pursuant to the *Residential Tenancy Act* (the “**Act**”). Two applications of the landlord for:

- an order of possession for non-payment of rent pursuant to section 55;
- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$1,550 pursuant to section 67; and
- authorization to recover the filing fees for both applications from the tenant pursuant to section 72.

And two of the tenant’s applications for:

- a determination regarding their dispute of a rent increase by the landlord pursuant to section 43;
- the cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the “**10 Day Notice**”) pursuant to section 46;
- the cancellation of the One Month Notice to End Tenancy for Cause (the “**One Month Notice**”) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order allowing the tenant to assign or sublet because the landlord’s permission has been unreasonably withheld pursuant to section 65; and
- authorization to recover the filing fees for both applications from the landlord pursuant to section 72.

The tenant attended the hearing. The landlord was represented at the hearing by an agent (“**HL**”). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and HL confirmed, that the tenant served the landlord with the tenant’s notice of dispute resolution packages and supporting documentary evidence. HL testified, and the tenant confirmed, that the landlord served the tenant with the landlord’s notice of dispute resolution packages documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$1,550; and
- 3) recover the filing fees?

Is the tenant entitled to:

- 1) an order cancelling the Notices;
- 2) an order that the landlord comply with the Act;
- 3) the cancellation of a rent increase;
- 4) an order that the tenant be allowed to assign or sublet the rental unit; and
- 5) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

At the heart of this dispute are two different tenancy agreements. Neither party denies the authenticity of either agreement. However, they disagree as to which agreement governs their relationship. I will set out the terms of each in turn.

I must also note that the parties disagree as to what exactly is being rented to the tenant. The residential property is a single-detached house (the “**house**”). Prior to the start of either of the tenancy agreements described below, the tenant resided in the house with his parents and other family. They vacated the house on May 15, 2021. The tenant says that he then rented the whole house from the landlord. HL says that he rented the basement suite only. However, due to the nature of the applications, it will not be necessary for me to decide this issue.

The first agreement is between the landlord and the tenant. It is for a fixed term starting May 16, 2021 and ending August 15, 2021. Month rent is \$700 and is due on the 16th of each month. The tenant paid the landlord a security deposit of \$350. The parties signed the agreement on May 16, 2021 (the “**First Agreement**”).

The second agreement is between the landlord, the tenant, and another individual (“**VB**”). It is for a fixed term starting May 16, 2021 and ending August 15, 2021. Monthly rent is specified as “\$700 + \$750” and the security deposit is listed as “\$350 → \$375”. The parties agreed that rent was due on the 16th of each month. HL stated that these figures indicate that the tenant is to pay \$700 per month and a security deposit of \$350 and that VB is to pay \$750 per month and a security deposit of \$375. The document itself indicates that the landlord and tenant signed it on May 16, 2021 and that VB signed it on May 22, 2021 (the “**Second Agreement**”).

The tenant testified that, at first, he was living in the rental unit alone pursuant to the First Agreement. However, shortly thereafter, he decided he wanted to bring in a “sub-tenant”. He testified that he found VB and introduced him to the landlord. The landlord insisted that VB be added to the tenancy agreement, and not be the tenant’s “sub-tenant”. The tenant and VB agreed. Once this agreement reached, the parties and VB created the Second Agreement, and backdated the signatures of the landlord and tenant to reflect that the tenant had signed the First Agreement on May 16, 2021.

The tenant testified that the VB paid monthly rent directly to the landlord rather than through the tenant.

The tenant stated that after entering into the First Agreement, he had discussions with the landlord about bringing in other tenants to occupy other parts of the house, and that this would cause the monthly rent to increase up to a maximum of \$1,450. For example, the tenant testified that if he located a third occupant, the rent would have stayed \$1,450, but would have been evenly apportioned between himself, VB, and the third tenant. He admitted that the full details of this arrangement were not fleshed out between him and the landlord, but stated that the landlord encouraged him to secure co-tenants so he would be better capable of paying rent. The tenant testified that he alone advertised on Facebook marketplace for new occupants.

The tenant testified that he is still looking for co-tenants, and that he currently has two “guests” living with him on a short-term basis. They pay him rent directly. The first moved in in October 2021. The other started staying at the rental unit on weekends in August 2021.

HL agreed with the tenant’s description of how the Second Agreement came to be.

Sometime in July 2021 (HL did not say when, exactly), VB notified the landlord of his intention to move out of the rental unit at the end of the fixed term via text message. He wrote “I’m moving back to Alberta. I’ll be out by August 15”. HL testified that VB had vacated the rental unit by August 1, 2021.

The landlord took the position that, as VB was a tenant and party to the Second Agreement, that his giving notice to end the tenancy and vacating the rental unit had the effect of ending the tenancy. On July 13, 2021, the landlord wrote a letter to the “the tenants of [the rental unit]: [the tenant]”, which stated:

Since our 2021 residential agreement will end on August 15th, 2021. You must vacate the premise on that day, and you need to clean the house including the yard, as well as restoring the premise to its original condition.

The tenant did not vacate the rental unit on August 15, 2021.

On September 2, 2021, the landlord issued the 10 Day Notice, which stated that the tenant failed to pay \$1,450 due on August 31, 2021. However, at the hearing, HL testified that the landlord received \$350 on August 15, 2021 and an additional \$700 September 1, 2021.

The parties agree that as of the date of the hearing, the tenant is not in arrears, and that he has paid \$1,450 in rent per month since September 2021.

On September 17, 2021, the landlord issued the One Month Notice, which provided the following details of the cause for ending the tenancy:

The cotenant, VB, gave a one month notice and moved out on August 1, 2021. The lease agreement is ended on August 31, 2021 for everyone on the lease. Everyone in the house must move out by then.

The tenant disputed both notices within five days of being served with them.

The tenant argued that VB's notice to end the tenancy does not have the effect of ending his tenancy. He argued that when VB gave his notice, this would have the effect of ending the Second Agreement and would cause the First Agreement to be reinstated.

Analysis

In order to determine if the tenant's tenancy has ended, I must determine if VB was the tenant's sub-tenant, a co-tenant, or a tenant of the landlord who shared common space with the tenant. This determine is significant, as, if VB and the tenant are co-tenants, VB's notice to end the tenancy would have the effect of ending the tenant's tenancy as well. Policy Guideline 13 addresses this point:

A tenant can end a tenancy by giving the landlord a written notice. A tenancy may also end if the landlord and any tenant or co-tenant mutually agree in writing to end the tenancy. **When a tenancy ends in these circumstances, the notice or agreement to end the tenancy applies to all co-tenants.**

In a monthly or periodic tenancy, when a tenant serves the landlord with a written notice to end tenancy, the effective date of the notice must be at least one month after the landlord receives the notice and on the day before rent is due. If the tenant gives proper notice to end the tenancy, the tenancy agreement will end on the effective date of that notice and all tenants must move out, even where the notice has not been signed by all tenants. When a tenant has ended the tenancy by giving written notice, all co-tenants remain responsible for meeting the terms of the tenancy agreement until the effective date of the notice.

Based on the evidence presented at the hearing, I do not find that VB was the tenant's subtenant. The tenant did not have a separate tenancy agreement with VB. VB did not pay rent to the tenant. Instead, VB and the tenant both entered into a tenancy agreement (the Second Agreement) with the landlord. VB paid the landlord rent directly. Such arrangements are not hallmarks of a sub-tenancy. Rather, I find that VB was a tenant of the landlord.

As such, I must determine if VB was the tenant's co-tenant, or if his tenancy was entirely separate from that of the tenants.

The Second Agreement distinguishes between rent and deposit payments which are to be made by VB and by the tenant. The amount of rent due to the landlord increased from the First Agreement to the Second Agreement, with the amount stated as due by the tenant remaining the same. This suggests that VB's tenancy may be separate from the tenant's tenancy, as the Second Agreement indicates that his financial obligations are separate from those of the tenant.

However, the tenant and VB both signed the Second Agreement. There is no indication on that agreement they each was renting a separate portion of the rental unit and sharing the common space. The tenant was the instigating force behind VB moving in, not the landlord. There is no evidence before me which would indicate that the landlord required the tenant to do this. The tenant posted advertisements for another occupant of the rental unit. This would suggest that the tenant and VB are co-tenants.

Additionally, the tenant testified that the parties agreed if he were to secure a third occupant for the rental unit, the cumulative amount of rent due between all three occupants would remain at \$1,450, the amount that combined amount that VB and the tenant were paying. This is a factor which strongly indicates that VB and the tenant were co-tenants, with each being jointly and severally liable for the actions of the other. The cap on monthly rent of \$1,450, despite the number of occupants indicates that a future occupant would not enter into an agreement with the landlord that was separate from the Second Agreement. Rather, it indicates that this occupant would be subsumed into the terms of the Second Agreement and become jointly and severally liable for both VB's and the tenant's obligations. As such, the Second Agreement must be, in substance as well as in form, an agreement under which VB and the tenant were jointly and severally liable.

Accordingly, after considering all the factors listed above, I find that the tenant and VB were co-tenants. Accordingly, per Policy Guideline 13, I find that VB's notice to end tenancy was sufficient to cause the Second Agreement to be ended.

I note that, despite VB's notice to end the tenancy being sent to the landlord via text message, I find that it was sufficiently served for the purposes of the Act. VB's notice was clear and unequivocal. The landlord acknowledges receipt of it and responded to it via text message. There is no dispute that the message was actually sent. Accordingly,

pursuant to section 71(2) of the Act, I find it appropriate to order that VB's notice was sufficiently served.

As stated above, per Policy Guideline 13, the effect of VB's notice to end the tenancy was to terminate the Second Agreement. This guideline also provides for the possibility that a tenancy may be reinstated, in the case where one co-tenant ends a tenancy agreement:

Co-tenants wishing to remain in the rental unit after a notice to end the tenancy has been given should discuss the situation with the landlord. If the landlord agrees to the tenant staying, the landlord and tenant must enter into a new written tenancy agreement.

If a tenant remains in the rental unit and continue paying rent after the date the notice took effect, the landlord and tenant may have implicitly entered into a new tenancy agreement. The tenant who moved out is not responsible for this new agreement.

Neither party alleged that the landlord and the tenant explicitly entered into a new tenancy agreement after VB vacated the rental unit. As such, should the tenant's tenancy continue, it would have to be on an implicit basis.

I accept that the tenant has continued to pay \$1,450 per month in rent since VB vacated the rental unit. As the tenant was only obligated to pay \$700 pursuant to the First Agreement, this would suggest that the parties did not implicitly agree that the tenant's tenancy would revert to the terms of the First Agreement.

I do not find that the tenant's continued payment of \$1,450 per month after VB vacated the rental unit had the effect of establishing a new tenancy between himself and the landlord. The landlord was clear in her position that she considered the tenant's tenancy to have been terminated by VB's notice to end the tenancy. On July 13, 2021, she demanded the tenant vacate the rental unit on August 15, 2021 for this reason. When the tenant refused to leave, she issued the One Month Notice citing VB's notice.

Based on the repeated insistence that the tenant was no longer permitted to stay in the rental unit, I decline to find that there was an implied tenancy between the parties. I find that any monies paid to the landlord by the tenant were for use and occupancy of the rental unit and did not amount to payments of rent pursuant to an implied tenancy agreement.

Accordingly, I find that the tenancy ended on August 15, 2021 (the effective date on VB's notice to end tenancy). As such, any notice to end tenancy issued after that date is unnecessary. The tenancy had already ended when they were issued. It is not necessary for me to assess their validity.

In light of this, pursuant to section 62(3) of the Act, I order that the tenant deliver vacant possession of rental unit to the landlord within 14 days of being served with a copy of this decision and attached order of possession by the landlord.

As the landlord has testified that the tenant is no longer in any arrears, I dismiss the landlord's application for a monetary order.

As the tenancy has ended, the tenant's applications for an order that the landlord comply with the Act, the cancellation of a rent increase, an order that the tenant be allowed to assign or sublet the rental unit are no longer necessary. I dismiss these without leave to reapply.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the applications, she may recover the filing fee for one of her applications from the tenant (\$100).

Pursuant to section 72(2) of the Act, the landlord may retain \$100 of the security deposit in satisfaction of this amount. She must handle the balance of the security deposit in accordance with section 38 of the Act.

Conclusion

The tenancy was ended by VB's notice to end tenancy. As such, I issue the attached order of possession effective 14 days after the landlord serves the tenant with a copy of this decision and attached order.

I dismiss the landlord's application for a monetary order, without leave to reapply.

The landlord may deduct \$100 from the security deposit in satisfaction of one of their filing fees.

I dismiss the entirety of tenant's applications, without leave to reapply.

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: February 3, 2022

Residential Tenancy Branch