



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNRT DRI RP FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause dated November 19, 2021 (1 Month Notice), for a monetary claim of \$2,256.52 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to dispute a rent increase, for regular repairs to the unit, site or property and to recover the cost of the filing fee.

The tenant, HCB (tenant), a roommate of the tenant, OKK (roommate), the landlord YL (landlord) and the spouse of the landlord, YL (spouse) attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The parties confirmed that they received evidence packages from each other and that they had the opportunity to review the evidence prior to the hearing. I find the parties were served in accordance with the Act.

Preliminary and Procedural Matters

The parties were informed that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they

will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

RTB Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the request to cancel the 1 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 1 Month Notice and the filing fee at this proceeding. The balance of the tenant's application is dismissed, **with leave to re-apply**.

Issues to be Decided

- Should the 1 Month Notice be cancelled?
- If yes, are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The tenancy began on July 1, 2014 with the tenant's father, who the landlord stated "disappeared", resulting in the tenant assuming the tenancy from his father in November of 2015 as the parties confirmed that the tenant began to pay rent as of November 2015 to the landlord. The parties confirmed that the current monthly rent is \$1,742.50.

The tenant writes in their application that they received the 1 Month Notice on November 19, 2021. The tenant filed to dispute the 1 Month Notice on November 25, 2021, which is within the permitted 10-day timeline under section 47 of the Act. Neither party submitted a copy of the 1 Month Notice. The parties agreed that the 1 Month Notice listed 3 causes as follows:

1. Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

3. Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

The landlord testified that for cause 1, the tenant has 2 other people residing in the rental unit, OKK and their boyfriend, "Mike" (Mike). This portion was dismissed during the hearing as the parties were advised that I did not find 3 people living in a 2-bedroom rental unit was an unreasonable number of occupants. Further rationale will be provided in my analysis below.

For cause 2, the landlord testified that the tenant breached a material term of the tenancy by operating an Airbnb in the rental unit for 5 years, yet the evidence submitted shows a screenshot of the tenant's LinkedIn profile (Screenshot), which states the tenant listed themselves as an Airbnb Host between February 2015 and October 2018 (3 years and 9 months). The landlord writes that shortly after the Screenshot was taken the Airbnb portion was deleted by the tenant. The parties were advised that due to the last date being in 2018 and without further evidence to support that the tenant was renting out all or a portion of the rental unit near the timing of the 1 Month Notice issued on November 2021, that I would not be ending the tenancy for a matter that occurred so long ago and was not a current issue, which I will address further in my analysis below.

For cause 3, the landlord claims that the tenant has assigned or sublet the rental unit to OKK and Mike without the written consent of the landlord. The tenant testified that while he lives in Whistler, he spends on average 2 nights per week at the rental unit and is sometimes there more often. The tenant admitted that they changed their BC driver's license to the Whistler address as their primary address due to their car insurance being renewed lately and that he does spend more days of the week in Whistler. The tenant also testified that he has been in Whistler for the ski season and plans to make the rental unit his primary address in May 2022, once the ski season is over.

OKK testified that they pay \$1,000.00 per month to the tenant for renting the master bedroom, which includes an ensuite bathroom. The parties discussed an issue with the second half-bathroom being in need of repairs; however, OKK testified it is still usable in the current condition.

The tenancy agreement does not indicate 1 tenant in the tenancy agreement as the maximum number of tenants. The landlord stated that they did a walkthrough of the rental unit and saw personal tax records of Mike in the second bedroom that the tenant claims to be residing in. The landlords submitted no photo evidence to support this statement and OKK denied that Mike uses the second bedroom as that is for the tenant.

The tenant and OKK denied that Mike is paying rent to either of them. OKK confirmed that Mike does help financially with the utilities; however.

The landlord stated that they feel the tenant is taking advantage of extremely low rent and is profiting from renting to OKK and Mike. The landlord also mentioned that they are unable to get insurance for the rental unit due to OKK and Mike residing in the rental unit. The parties confirmed that the landlord did not list the insurance issue on the 1 Month Notice.

The landlord testified that they have never approved OKK or Mike to be tenants or co-tenants and have not signed any agreement from OKK or Mike or have received any rent from OKK or Mike.

After 47 minutes, the hearing concluded.

Analysis

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

When a tenant disputes a 1 Month Notice, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1 Month Notice is valid, the 1 Month Notice will be cancelled.

Where 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.

Cause 1 - The tenant admitted that they have 2 other people residing in the rental unit, OKK and their boyfriend, Mike. I dismissed this cause due to insufficient evidence during the hearing as find that 3 people living in a 2-bedroom rental unit was not an unreasonable number of occupants. In reaching this finding I have considered that OKK and Mike are in a relationship and share the master bedroom. I am not convinced that Mike lives in the second bedroom as the landlord provided no supporting photo evidence to support their testimony and OKK denied that Mike uses the other bedroom and that the tenant occupied the second bedroom. Given the above, I dismiss this cause due to insufficient evidence, without leave to reapply.

Cause 2 - The landlord testified that the tenant breached a material term of the tenancy by operating an Airbnb in the rental unit for 5 years. Based on the Screenshot provided

by the landlord, I find that tenant operated an Airbnb for 3 years and 9 months and that the Screenshot does not support 5 years as claimed. I find the landlord did not present any other evidence during the hearing that would support 5 years of Airbnb use and given that 2018 was the last year listed on the Screenshot, I find that it is too late to attempt to end the tenancy as that issue is not current. I will caution the tenant; however, that any further use of the rental unit for Airbnb purposes could lead to a new 1 Month Notice being issued and upheld. Neither the tenant or the guest of a tenant is permitted to use the rental unit for Airbnb going forward as that I consider to be business and not for residential use and this tenancy is a residential tenancy.

Cause 3 – While the landlord claims that the tenant has assigned or sublet the rental unit to OKK and Mike without the written consent of the landlord, I find that both OKK and Mike are roommates of the tenant as there is no evidence before me that OKK and Mike have signed a separate tenancy agreement. Therefore, I dismiss this cause due to insufficient evidence, without leave to reapply, as I find the tenant has not sublet the rental unit as the evidence before me from both the tenant and OKK is that the tenant continues to reside in the rental unit on average, 2 days per week. The only way for the tenant to sublet, is to give up exclusive possession to OKK and Mike, which I have insufficient evidence before me to support.

In addition, I find that the tenant has not assigned the tenancy to OKK and Mike as neither OKK or Mike pay the landlord directly, so as stated above, I find that OKK and Mike are roommates only and are not tenants. As such, I find that OKK and Mike have no rights under the Act to protect them because they are not tenants or co-tenants. I have removed OKK from the application as a result, as I find the OKK and Mike are not tenants as the Act provides no remedy between a tenant and their roommate.

Therefore, based on the above, **I cancel** the 1 Month Notice dated November 19, 2021, due to insufficient evidence. The 1 Month Notice is of no force or effect.

I ORDER the tenancy to continue until ended in accordance with the Act.

I have exercised my discretion under section 72 of the Act to **not grant** the filing fee as a result of the tenant confirming via the Screenshot that they used the rental unit between 2015 and 2018 for Airbnb purposes, which I find is a commercial/business use and not a residential use.

I caution the tenant or any guests of the tenant to ensure the rental unit is not used for Airbnb purposes for the remainder of this tenancy. If the tenant does, the landlord may issue a new 1 Month Notice.

Should any other issue arise during the tenancy that may cause the landlord to issue a new 1 Month Notice (or other Notice to End Tenancy) on the tenant, this decision does not restrict the landlord from doing so.

Conclusion

The tenant's application is successful.

The 1 Month Notice is cancelled.

The tenancy shall continue until ended in accordance with the Act.

The filing fee is not granted for the reason stated above.

This decision will be emailed to both parties as indicated above.

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: March 22, 2022

Residential Tenancy Branch