



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing, and the landlord was largely represented by an agent. The tenant and the landlord and the landlord's agent each gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing I learned that the landlord has not provided any evidence to the tenant, but the tenant has provided all evidence to the landlord. Any evidence that a party wishes to rely on must be provided to the other party, even if the other party already had a copy. Since the landlord has not provided any evidence to the tenant, none of the landlord's evidence is considered in this Decision. All evidence of the tenant has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause dated April 4, 2022 was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on September 15, 2021 and believes the tenant still resides in the rental unit, but is not sure. Rent in the amount of \$1,800.00 is payable on the 15th days of each month and there are no

rental arrears. On September 5, 2021 the landlord collected a security deposit from the tenant in the amount of \$900.00. On January 24, 2022 the landlord collected a pet damage deposit in the amount of \$900.00, and both deposits are still held in trust by the landlord. The rental unit is a basement suite and the landlord's family occupies the 2nd and upper levels of the home. A copy of the tenancy agreement has been provided by the tenant for this hearing.

The landlord's agent further testified that a One Month Notice to End Tenancy for Cause was served on the tenant, and a copy has been provided by the tenant for this hearing. It is dated April 4, 2022 and contains an effective date of vacancy of April 4, 2022. The reason for issuing it states: Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

The tenant has rented the suite to someone else as a sublet. The rental unit is a 2 bedroom suite and the tenant sublet with 2 people, and it is reasonable to believe that the tenant is not living there anymore, without the landlord's permission. There were 2 tenancy agreements given to the landlord by the 2 occupants. They were the standard tenancy agreements naming the tenant as landlord on both. Rent for one is \$800.00 per month and \$750.00 for the other. Security deposits of \$400.00 and \$375.00 were collected as well as pet damage deposits of \$400.00 and \$375.00. That money did not go to the landlord. Both tenancy agreements commence on January 1, 2021 for a fixed term until September 15, 2022, then revert to a month-to-month tenancy. The tenant did not ask permission to rent.

The landlord's agent is not certain if the tenant still lives there, but it is reasonable to assume that he has vacated since there are only 2 bedrooms. The landlord didn't collect a pet damage deposit from the tenant until after the landlord found out that the tenant had 2 roommates, and the tenant paid it without the landlord requesting it.

It is not known how many days the tenant has lived there, but maybe a couple. When the tenancy agreement was signed it includes utilities, and paying \$1,800.00 and collecting from the other 2 tenants is not fair to the landlord, when the landlord is covering all costs and the tenant only pays \$250.00. However, one of the sub-tenants has now rented another portion of the rental property from the landlord, who now pays \$900.00 per month, and moved upstairs on May 2, 2022. The landlord told the 2 sub-tenants that it was illegal, and since there was room on the ground floor, the landlord rented space. The other sub-tenant said he had nowhere to go.

The landlord testified that the One Month Notice to End Tenancy for Cause dated April 4, 2022 was served by posting it to the door of the rental unit on April 4, 2022.

The tenant testified that when the tenancy agreement was signed the tenant asked about the maximum number of people, and was told 4. The tenant got 2 roommates. The rental unit has 3 rooms with doors, and the tenant still resides in the rental unit; the living room has been converted to a bedroom.

The commencement of the tenancy agreements was a mistake, and the tenant didn't know that he couldn't sign them. There's only 1 roommate now; one moved upstairs and has another tenancy agreement with the landlord. He was the tenant who paid the tenant \$800.00 per month.

When the tenancy agreement was first signed with the landlord, the landlord told the tenant that if the tenant wanted a pet to let the landlord know and pay a pet damage deposit, so the tenant did. The pet is a cat that belongs to the remaining roommate, and the tenant paid the deposit.

Only 2 people currently reside in the rental unit, one of whom is the tenant and a copy of the tenant's Owner's Certificate of Insurance and Vehicle Licence has been provided for this hearing showing the tenant's address as that of the rental unit. It has an effective date of January 24, 2022.

In rebuttal, the landlord's agent testified that there's more than 2 males living in the basement, and has captured footage of movement between the front entrance, so there's also a female, and 3 people living in the basement suite.

The tenant replied that the female is a visitor only, and the tenant only has 1 male roommate. The tenant uses the living room as a bedroom because it's bigger. The tenant didn't ask the landlord for permission because it's not a sublet under the law. The tenancy agreements signed with the roommates are not effective because the tenant is not a landlord, and they know that.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause (the Notice) and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

The tenant's defence to the reason for issuing the Notice is that he didn't know he couldn't sublet and create tenancy agreements with others, and it's not a sublet under

the law or effective because the tenant isn't a landlord, and the other occupants know that.

I agree with the landlord's agent that there is no clear evidence of the tenant actually living in the rental unit or how many people reside there. What is clear is that the tenant rented rooms under separate tenancy agreements to at least 2 other people.

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

Occupants/roommates Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the *Act* does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the *Residential Tenancy Act*.

In other words, the third party would be the “sub-tenant”, and if the tenant remains in the rental unit, there is no landlord/tenant relationship between the tenant and the “sub-tenant.” The Policy Guideline goes on to say:

The use of the word ‘sublet’ can cause confusion because under the *Act* it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement. ‘Sublet’ has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the *Act*, this is not considered to be a sublet.

When determining whether a One Month Notice to End Tenancy (form RTB-33) for cause was issued properly, the arbitrator will examine a number of factors, including the terms of the tenancy agreement between the original landlord and the tenant, whether the agreement contains terms restricting the number of occupants or the ability of the tenant to have roommates and the intent of the parties. As the facts of each case differ, an arbitrator will have to consider all the evidence submitted by the parties when making a determination.

In this case, I have reviewed the tenancy agreement entered into by the original landlord and the original tenant on September 5, 2021 which states:

9. ASSIGN OR SUBLET

1) The tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this tenancy agreement is for a fixed length and has 6 months or more remaining in the term, the landlord must not unreasonably withhold consent. Under an assignment a new tenant must assume all of the rights and obligations under the existing tenancy agreement, at the same rent. The landlord must not charge a fee or receive a benefit, directly or indirectly, for giving this consent.

2) If a landlord unreasonably withholds consent to assign or sublet or charges a fee, the tenant may apply for dispute resolution under the *Residential Tenancy Act*.

There is nothing in the tenancy agreement restricting the number of occupants, and I am not satisfied, considering the above, that the tenant has vacated the rental unit or that the landlord has established a sublet under the law. Therefore I cancel the One Month Notice to End Tenancy for Cause.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant in that amount and I order that the tenant may reduce rent for a future month by that amount or may otherwise recover it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated April 4, 2022 is hereby cancelled and the tenancy continues.

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

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: June 20, 2022

Residential Tenancy Branch