



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 700 BIDWELL LIMITED PARTNERSHIP and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, FFT**

Introduction

This reconvened hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

There was an interim hearing of this matter held on May 24, 2022 and this decision should be read together with the Interim Decision issued on that date.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent and counsel.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began on September 2018. Current monthly rent is \$2,500.00 payable on the first of each month. The parties renewed their lease with a new signed agreement on May 3, 2021. The agreement lists only the tenant as the occupant of the rental unit.

The agreement provides:

13. ADDITIONAL OCCUPANTS. Only the Tenant and those persons listed in clause 2 above may occupy the Rental Unit or Property. A person not listed in clause 2 above whom without the Landlord's prior written consent, resides in the Rental Unit or on the Property in excess of fourteen (14) cumulative days in a calendar year will be considered to be occupying the Rental Unit or Property contrary to the Agreement. If the Tenant anticipates an additional occupant, the Tenant must apply in writing for approval from the Landlord for such person to become an authorized occupant. Failure to obtain the Landlords written approval is a breach of a material term of this Agreement, giving the Landlord the right to end the Term on proper notice.

The parties agree that the tenant allowed additional occupants to reside in the rental unit from approximately February 2021.

The tenant says that agents of the landlord were aware of the identify and presence of the additional occupants and submitted email correspondence dated February 1, 2021 where an agent of the landlord KW requests "Could you please send your roommates full names?"

The landlord submits that these additional occupants were not authorized nor given written approval to reside in the rental property. The landlord says that email correspondence is not a proper manner of requesting or granting approval under the tenancy agreement.

The tenant subsequently emailed an agent of the landlord on November 11, 2021, November 15, 2021 and December 17, 2021 requesting to add an occupant to their tenancy agreement. The landlord's agent RS wrote in a reply email dated December 20, 2021:

It has recently come to our attention that you have a sublease with another individual residing in your unit, which you did not obtain written consent for. This puts you in default of section 16. of your lease. The individual you are subleasing to will need to vacate the unit as soon as possible.

The parties agree that the reference to sub-lease is an error and the actual breach pertains to additional occupants.

The tenant sent an email reply to the landlord's agent RS on the same day, December 20, 2021, informing them that "management was aware of all occupants in the suite. When I asked if written conscientious is required, I was told no need."

The tenant subsequently sent an email to the landlord on February 2, 2022 informing them that the occupant "no longer resides in the unit".

The landlord issued a 1 Month Notice dated February 4, 2022 indicating the reasons for the tenancy to end are that there has been a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice, and that the tenant has assigned or sublet the rental unit. The landlord clarified that there has been no assignment or sublease and that portion was indicated in error.

The landlord issued their 1 Month Notice on February 4, 2022, after being informed that the breach was corrected. The landlord submits that they still seek an Order of Possession as they feel the breach was a pattern of ongoing disregard for the terms of the agreement by the tenant.

The landlord submitted into evidence copies of correspondence between the occupant and the landlord's agent RS dated February 7, 2022 where the occupant informs them that they have already vacated the rental unit.

The tenant filed their present application for dispute resolution on February 14, 2022. The parties agree that as at the date of the hearing there are no additional occupants residing in the rental unit. The tenant submits that they have made multiple requests to the landlord for permission to add occupants as they wish to house refugee family members fleeing the ongoing war in the Ukraine.

Analysis

Section 47(4) of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute

resolution with the Residential Tenancy Branch. In the present case the parties agree the tenant was served with the 1 Month Notice on February 4, 2022 and the tenant filed their application on February 14, 2022. As such, I find the tenant was within the statutory timeline to file their application.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that there has been a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice was issued.

Residential Tenancy Policy Guideline 8 defines a material term as a term that is so important that the most trivial breach of that term gives the other party the right to end the agreement. The landlord submits that the requirement for written approval of additional occupants is a material term intended to protect the rights of the tenant, landlord and occupants.

The Guideline further provides:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- • that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy

The landlord submits that the email correspondence of December 20, 2021 is written notice informing the tenant of the breach of the material term. They say that the email incorrectly identifies the section of the agreement but the parties understood the underlying breach was the additional occupant residing in the rental unit. The deadline given in the email of “as soon as possible” is interpreted by the landlord as being a fixed deadline which is reasonable.

I find insufficient evidence to support the landlord's interpretation of the interactions between the parties culminating in the issuance of the present 1 Month Notice. While, the signed tenancy agreement contains a clause about Additional Occupants, the history of correspondence between the parties demonstrated in the copies of emails shows that agents of the landlord were aware of the existence and presence of the occupant as early as February 2021 when they first moved in. There is little evidence that the landlord required additional documentary requests from the tenant or that the landlord did not allow the occupant to reside in the suite. If the landlord felt the presence of the occupant was a breach of a material term it would be reasonable to expect they would have taken some action in the preceding year before finally issuing a Notice in February 2022.

Based on the evidence I find the landlord was aware of the presence of the occupant from February 1, 2021 and there was no indication that the landlord believed this to be a breach until the correspondence of December 20, 2021. I find the landlord's conduct to be inconsistent with a party who believes a material term of an agreement has been breached. I find the landlord's failure to take action to inform the tenant they believed there was a breach for 10 months when they were aware of the presence of the additional occupant to be conduct that contradicts that the term was vital, urgent or important within the context of the tenancy.

Even if I were to find there was a material term, I find the email of December 20, 2021 to be insufficient written notice to end the tenancy. Not only does the correspondence incorrectly identify the clause of the tenancy agreement and references a sublease rather than an additional occupant, I find the timeline given to correct the breach of "as soon as possible" to be vague and without a fixed timeline so that it is reasonable.

Despite the poor quality of the written notice the undisputed evidence of the parties is that any breach was corrected by February 2, 2022 when the tenant informed the landlord that there were no additional occupants residing in the rental unit. This was supported in the landlord's evidence in the correspondence between the landlord's agent and the occupant confirming they had moved out by the beginning of February 2022.

I find the landlord has not met their evidentiary burden on a balance of probabilities showing the basis for the 1 Month Notice. I find no breach of a material term that would give rise to a basis to end the tenancy. I find the term referenced by the landlord to not be material based on their conduct and no written notice was given that meets the

criteria set in the Guideline. I further find that any breach has been corrected prior to the issuance of the 1 month Notice. Accordingly, I grant the tenant's application and cancel the 1 Month Notice of February 4, 2022. This tenancy continues until ended in accordance with the *Act*.

As the tenant was successful in their application they are also entitled to recover their filing fee from the landlord. As this tenancy is continuing I allow the tenant to satisfy this monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The tenant is successful in their application. The 1 Month Notice of February 4, 2022 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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 20, 2022

Residential Tenancy Branch