Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, FFT**

Introduction
This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "*Act*") for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the tenant and the landlord attended the hearing. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package and the tenant acknowledged service of the landlord's evidence. Neither party took issue with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided
Should the landlord's notice to end tenancy for cause be upheld or cancelled?
Can the tenant recover the filing fee?

Background and Evidence
At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In

accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree that the rental unit is manufactured home situated on a rural property adjoining the landlord's residence. The manufactured home and the landlord's residence have 2 separate addresses although they are on the same piece of land separated by a fence.

The landlord gave the following testimony. The tenancy began in March 2010. Rent is currently $1,170.00 per month. On July 28, 2022, the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause by posting a copy to the tenant's door. A witnessed, signed proof of service and a copy of the notice to end tenancy were provided as evidence.

The notice provides 4 reasons for ending the tenancy:

1. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
2. the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
3. tenant has not done required repairs of damage to the unit/site/property/park;
4. tenant has assigned or sublet the rental unit/site without landlord's written consent

The landlord testified that the tenant erected a structure on the rental property without her approval and without permits from the township. The "red barn" was not constructed to code and a complaint was submitted anonymously to the township and the township has told the landlord that the structure does not conform to bylaws restricting its size to 107 square feet. Attached to the "red barn" was another structure for keeping horses. The landlord contends that both the red barn and the horse structure are illegal because they were built without permits and the significant risk to the property is the threat that the township's bylaw enforcement officers will levy fines against the property for not being in compliance with building bylaws. The landlord

acknowledged that some of the horse structure was mostly removed when the tenant and his wife left the rental property to live on their own property.

The tenant has also disposed of horse manure and straw bedding by dumping it on the property and on the landlord's property. The tenant had removed the fence dividing the two and the disposal of the horse manure is environmentally hazardous as it enters a ditch which could contaminate a water supply.

The landlord testified that the tenants advised her in late April that they had purchased a home of their own and that they planned on vacating the rental unit by the end of June 2022. The tenants are now living in their own house, but their son is now living in the rental unit. The landlord testified that she lives right next door and doesn't see the tenant there, only occasionally. The landlord has been accepting rent via e-transfer but for each payment, the landlord has noted "for use and occupancy" on the memo back to the tenant. The landlord points out that clause 5 of the addendum to their tenancy agreement states *Tenant must inform landlord in writing, and receive written permission before any addition to the household, or if any guest will be staying more than 3 weeks*. The reasoning for this is because the property is serviced with a septic field and tank that cannot handle more than 2 people residing on the property. The landlord testified that she did not give the tenant permission, verbal or written, to have his son take over the tenancy.

The tenant gave the following testimony. He has indeed moved his residence to a property he owns in April 2022, however he works the winters locally and returns to the rental unit to stay with his son who moved there in April and May of 2022. During the summer months, he is on the road. The tenant acknowledges he did not have the written approval of the landlord to sublet or assign the tenancy agreement. The tenant testified that he was unaware moving his son in without the landlord's written permission would be an issue.

The "red barn" was started as a small shop, 16' x 24' in the summer of 2016. The tenant testified he was unaware a permit would be required to construct it. In 2020, an additional barn, 24' x 30' was added and completed in the summer/fall of 2021. The tenant testified that he understood that the temporary nature of the barns meant no permit was required but he never called the township to make sure. The "red barn" is still there and the tenant is willing to sell it to the landlord. The remainder was removed.

The tenant hired a contractor to spread the manure on the land, and it is no longer a hazard. It has turned to soil.

Analysis

Section 47(1) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy. 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.

The tenant received the landlord's One Month Notice on July 28th. The tenant filed an application to dispute the notice on August 5, 2022, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the Act.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden, on a balance of probabilities, to prove the grounds for the notice.

The landlord provided 4 reasons for ending the tenancy. If **any of those reasons** are valid, I must grant the landlord an Order of Possession. Turning to the last reason on the notice to end tenancy, *tenant has assigned or sublet the rental unit/site without landlord's written consent*

section 34 of the Act states:

Assignment and subletting

34 (1)Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

Residential Tenancy Branch Policy Guideline P-19 states:

In most circumstances, unless the landlord consents in writing, a tenant must not assign or sublet (there are exceptions to this for manufactured home parks). A tenant who assigns their tenancy agreement, or sublets their rental unit, without obtaining the written consent of the landlord, may be served with a One Month Notice to End Tenancy (form RTB-33), pursuant to the Legislation.

…

Assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.

…

When a rental unit is **sublet**, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant.

In the matter before me, the tenant acknowledged he moved his place of residence to a different town altogether and that his son is now residing in the rental unit. While this arrangement is convenient for the tenant and works well for his lifestyle, I find that by installing his son in his former rental unit, the tenant has effectively assigned the tenancy agreement to his son without the landlord's written permission. As such, I find the tenant has breached section 34 of the Act. Consequently, I uphold the landlord's 1 Month Notice to End Tenancy for Cause under section 47(1)(i) and I dismiss the application seeking to cancel it. As the notice to end tenancy has been upheld under section 47(1)(i), the remaining reasons for ending the tenancy will not be analyzed.

Section 55 requires that if the director upholds the landlord's notice and/or dismisses a tenant application seeking to cancel one, I must grant the landlord an Order of Possession if the notice complies with section 52. I have reviewed the notice and I find it complies with the form and content provisions as set out in section 52. The landlord is granted an Order of Possession. As the effective date stated on the notice to end tenancy has passed, the landlord is entitled to an Order of Possession effective 2 days after service upon the tenant.

As the tenant's application was not successful, the tenant is not entitled to recovery of the $100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective 2 days after service on the tenant. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

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: January 06, 2023

Residential Tenancy Branch