



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAY RADKE RADKE BROS CONSTRUCTION
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC OLC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on February 9, 2023. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord confirmed receipt of the Tenant's application, Notice of Dispute Resolution Proceeding and evidence. I find the Tenant sufficiently served these documents to the Landlord. The Landlord stated he did not serve his evidence to the Tenant. Given this evidence was not served to the Tenant, I find it is not admissible, as the Landlord failed to comply with the Rules of Procedure for service of the documents.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss unrelated matters, with leave to reapply, on the Tenants' application with the exception of the following claim:

- to cancel the 1 Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's 1 Month Notice (the Notice) cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings, or unless the parties specifically pointed me to the evidence.

The Tenants acknowledged receiving the Notice on October 3, 2022. The Landlord issued the Notice for the following reasons:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- Tenant has assigned or sublet the rental unit/site without Landlord's written consent.

Under the details of cause section on the Notice, the Landlord stated that:

Details of the Event(s):

The tenant has had an unauthorized occupant in the unit since August 21, 2022, and appears to be subletting the unit to the unauthorized occupant, as a suite inspection performed by the landlord/ agent on September 14, 2022 showed that all the tenant's belongings were packed away, and the unauthorized occupant is obviously living in the unit. A Caution Notice was served to the tenant on September 14, 2022, advising him if the unauthorized occupant remained in the unit after October 3, 2022, he would be served a One Month Notice to End Tenancy for Cause. The unauthorized occupant remains in the unit as of the date of this Notice to End Tenancy.

During the hearing, the Landlord explained that they issued the Notice because the Tenant sublet the rental unit without their consent. The Landlord explained that they did a suite inspection on or around September 14, 2022, and at that time, they noticed that the Tenant's belongings were all packed up in boxes, and another female was living in the rental unit. The Landlord stated that there was no evidence of any male clothing or toiletries, and it appeared to be only the one female residing in the unit at that time. The Landlord stated that they issued a caution notice to the Tenant about his illegal sublet, and that the occupant would have to move out by October 3, 2022.

After the occupant failed to move out, the Landlord issued the Notice to End Tenancy on or around October 3, 2022. The Landlord stated that the female occupant moved out on or around November 25, 2022, and at that time, the Landlord stated they spoke with the occupant and received a letter from her. Although a physical copy of the letter was not provided into evidence, the Landlord's agent read this letter from the female occupant, and she informed them that she moved into this rental unit, as a sublease, after finding an ad on Facebook Marketplace for \$1,800.00 per month. The occupant further stated that she paid a security deposit of \$900.00 to the Tenant, and she moved in around August 21, 2022. The Landlord stated that the occupant also provided them with copies of e-transfers which she sent to the Tenant to show what she was paying while she was subleasing the rental unit from the Tenant.

The Tenant stated that he works in a job where he has to be out of town for extended periods of time, and during the Fall of 2022, he was out of town for 3 week periods. The Tenant asserts that the female who was living in the rental unit was his girlfriend, and she was not subleasing. The Tenant asserts that he asked the Landlord about his girlfriend moving in, and he was met with resistance and a demand for more rent to be paid, and potentially a new lease.

The Tenant acknowledged that he boxed up most of his meaningful belongings at some point before he went to stay in the Caribbean. He stated he went to the Caribbean in early December 2022. The Tenant asserts that he was planning on coming back to live

in the rental unit once he came back from the Caribbean in the late winter//early spring 2023. Although he now feels this is not likely, given the ongoing dispute.

The Landlord stated that the Tenant gave his only set of keys to the female who was subleasing his unit, and when she left, she returned the keys. The Landlord stated that the Tenant does not have any way to access the building, currently.

Several other issues were alleged by the parties, such as the Tenant not paying rent after December 2022, and the Landlord locking the Tenant out and disposing of some personal items.

Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

I have reviewed the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the *Act*. The Landlord selected two grounds on the Notice, as follows:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- Tenant has assigned or sublet the rental unit/site without Landlord's written consent.

I note that neither party provided a copy of the tenancy agreement into evidence, and as such, I am not satisfied that there is sufficient evidence detailing what the material terms of the tenancy agreement were, and whether or not the Tenant breached a material term of the tenancy agreement. I decline to consider this ground further.

I turn to the second ground noted on the Notice, regarding assigning/subletting without the Landlord's consent.

I turn to the following relevant portions of the *Act*:

Assignment and subletting

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

Having reviewed the evidence and testimony, in totality, I note the Tenant denies that he sublet the unit, and asserts that the person living in the rental unit was his girlfriend and that he wanted her to move in to share the rent with him. However, in contrast to this, the Landlord asserts that the Tenant was clearly not living in the rental unit while this other female occupant was. The Landlord does not believe it was the Tenant's girlfriend. The Landlord explained they saw numerous indicators that it was only one female living in the suite during their suite inspection in September 2022. I note the Landlord also stated that they spoke to the female occupant when she was moving out, at the end of November 2022, and she confirmed she was subleasing from the Tenant, and was not sharing the space with him. The Landlord's agent also attended the hearing, and read out loud a copy of the letter the female occupant gave to them when she was leaving. This letter specified that she found the suite for rent online, as well as what she was paying, and the amount of security deposit she paid. The female occupant also provided some details about amounts and dates she paid rent to the Tenant, although the Tenant denied being paid these amounts.

When weighing these two competing versions of events, I find the Landlord and his agent, provided a more clear, detailed and compelling account of what occurred with respect to the female occupant who lived in the unit. As such I have placed more weight on the Landlord's version of events. I also note the Landlord stated that the Tenant only had one set of keys, which he appears to have given to the female occupant while she was living there. The Tenant did not refute that he only had the one set of keys, which he gave to the female occupant. If the Tenant was still residing, even part time, in the rental unit while the female occupant was living there, then it seems odd that he would leave his only means of access with this other occupant, if he was in fact coming and going as he asserts.

Ultimately, when weighing the two versions of events, I find it more likely than not that the Tenant sublet the unit to the female occupant starting around August 21, 2022, and lasting for a couple of months. There is no evidence that the Landlord consented to this sublease, and I find it more likely than not that the Tenant breached section 34(1) of the Act in this regard.

I find the Landlord had cause to end the tenancy. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending.

Under section 55 of the Act, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an

order of possession. I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession.

As the Tenant was not successful with their application, I dismiss his claim to recover the cost of the filing fee.

Conclusion

The Tenant's application to cancel the 1-Month Notice to End Tenancy for Cause is dismissed.

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 10, 2023

Residential Tenancy Branch