



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding DEVON PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the Tenant's application under the Residential Tenancy Act (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated October 6, 2022 (the "One Month Notice") pursuant to section 47;
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Tenant and the Landlord's property manager TJ attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Correction of Landlord

This application initially named TJ as the landlord and respondent. The parties agreed that the landlord is Devon Properties Ltd. By consent of the parties and pursuant to section 64(3)(c) of the Act, I have amended this application to replace TJ with Devon Properties Ltd. as the landlord and respondent.

Preliminary Matter – Service of Dispute Resolution Documents

The parties did not raise any issues with respect to service of documents for dispute resolution. TJ confirmed the Landlord's receipt of the Tenant's notice of dispute resolution proceeding package ("NDRP Package") and documentary evidence. I find the

Landlord was sufficiently served with the NDRP Package and the Tenant's documentary evidence pursuant to section 71(2)(c) of the Act. The Tenant confirmed receipt of the Landlord's documentary evidence. I find the Tenant was served with the Landlord's documentary evidence in accordance with section 88 of the Act.

Issues to be Decided

1. Is the Tenant entitled to cancel the One Month Notice?
2. Is the Tenant entitled to reimbursement of the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The rental unit is part of a multi-unit complex. This tenancy commenced on July 1, 2018 and is month-to-month. Rent is \$1,538.16 due on the first day of each month. The Tenant paid a security deposit of \$725.00.

Copies of the One Month Notice have been submitted into evidence. The One Month Notice is signed by TJ on behalf of the Landlord and has an effective date of November 30, 2022. The reasons for this notice are:

- Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- Tenant has assigned or sublet the rental unit/site/property without landlord's written consent

The One Month Notice contains the following details of cause (portions redacted for privacy):

Tenant is using the suite @ [rental unit address] as a short term rental unit. Tenant is in direct breach of his Residential Tenancy Agreement. Tenant has allowed multiple persons, unknown to the Landlord, access to the building and to the suite in question. The Landlord had no prior knowledge of this activity and has never given consent in any way, written or otherwise. The short term rental was discovered by the investigative unit of the [city] and is currently posted on the internet site VRBO (Vacation Rentals by Owner) @ [website] as listing # [number]. It is further noted that this activity is illegal under [city] Bylaws, and requires a Business License, even if it were permitted under the RTA, which it is not. This illegal activity has significantly jeopardized the Landlord's Lawful Rights and subjected the Landlord's property to significant risk. The Landlord seeks to Terminate the Tenancy forthwith and hereby requests that the tenant surrender peaceable vacant possession of the suite on or before November 30th 2022.

TJ stated that he and the building manager, GC, had suspicions of illegal sublets or short-term rentals occurring in the building. TJ explained that GC had observed individuals leaving with suitcases and getting into taxis.

TJ stated that the city requires all short-term rentals to be licensed, which must be done by the property owner and not tenants. TJ referred to email correspondence with MP, an employee from the city's bylaw and licensing services, who had contacted the Landlord about an unlicensed listing in the rental building. MP sent a VRBO link and requested the Landlord's assistance with identifying the suite. TJ explained that once they viewed the link, they immediately recognized the suite as the rental unit, since they had recently been in the rental unit to replace the base heater and tub surround. TJ stated that the rental unit is very uniquely decorated. The Landlord submitted screenshots of the VRBO listing into evidence, including pictures of the suite and calendar showing availability.

TJ submitted that the Landlord never granted permission for the Tenant to operate a short-term rental. TJ argued that short-term rentals are against the Act and are not covered under the tenancy agreement unless the Landlord gave express permission. TJ argued that short-term rentals would be a commercial use of the premises that the Landlord would not permit. TJ argued that the Landlord's lawful right to property would be violated. TJ argued that there would be issues with the security of the building, liability, and exposure of the Landlord's property to significant risk. TJ argued that there would be no vetting of people who are showing up and coming into the building.

TJ stated that the Tenant was traveling abroad at the time. TJ indicated that after receiving MP's email, he encountered a foreign couple in the building lobby, whom he did not recognize. TJ stated that he suspected it was the couple, and he informed the city that the Landlord would be ending this tenancy.

TJ explained that he and GC went to knock on the door of the rental unit to deliver the One Month Notice on October 6, 2022. TJ stated that they were greeted by the foreign lady, who informed them that she and her boyfriend were there for a few days. TJ stated that the lady signed the proof of service form to acknowledge receipt of the One Month Notice. According to TJ, the foreign couple appeared to be tourists. TJ stated that a courtesy copy of the One Month Notice was emailed to the Tenant. TJ stated that the Tenant returned on or around October 12, 2022 and sent several emails denying that he had short-term rentals.

TJ argued that the Tenant breached material terms of the tenancy agreement, including clause 13 (additional occupants), clause 14 (use of rental unit), and clause 28 (liability and insurance). TJ argued that the Tenant has not provided any evidence of friendship with the foreign couple or evidence to show that he cancelled his VRBO account before he was caught.

In response, the Tenant acknowledged that the VRBO account was his. The Tenant stated that his suite was rented for TV and film, which made it easy to copy and paste the information.

The Tenant explained that he was going on a trip abroad for three weeks and had informed GC via text message that two friends will be staying over. The Tenant submitted text message correspondence with GC dated September 14, 2022. The Tenant stated that he asked his friends to take care of his plants. The Tenant stated he was told that his friends would be staying until October or November 2022. According to the Tenant, one of the two friends, GV, went back home abroad first due to having found a job. The Tenant submitted a screenshot of GV's flight ticket. The Tenant stated that the other friend, CR, stayed with the Tenant until November 2022. The Tenant stated that CR was his witness when he served the Landlord with evidence on October 28, 2022. The Tenant confirmed that CR went back to the same country as GV. The Tenant stated that CR and GV are also friends with his friends and others who live in the building.

The Tenant stated that he has been in the rental unit since and did not receive any payment from VRBO. The Tenant stated that he tried to delete his VRBO account while abroad. The Tenant submitted a copy of an email to VRBO support dated October 6, 2022 requesting his account to be permanently deleted. The Tenant acknowledged receipt of the One Month Notice sent to him via email on October 6, 2022.

The Tenant argued that GC had given the Tenant permission for his friends to stay in the rental unit, by responding “k” to the Tenant’s text message. The Tenant denied that the couple had paid any rent or rented the rental unit through VRBO.

Analysis

1. Is the Tenant entitled to cancel the One Month Notice?

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month’s notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 47(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 52, which states:

Form and content of notice to end tenancy

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) *[tenant’s notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant’s notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.

Section 47(2) further requires that the effective date of a landlord’s notice under section 47 must be:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, I have reviewed the One Month Notice and find that it is in an outdated Residential Tenancy Branch form. Pursuant to section 10(2) of the Act, I accept the One Month Notice is not invalidated because of this reason, as I find that the deviations from the approved form do not affect the substance of the One Month Notice and are not intended to mislead. I find the One Month Notice to otherwise comply with the requirements of sections 52 and 47(2) of the Act.

I find the Tenant was sufficiently served with a copy of the One Month Notice on October 6, 2022 pursuant to section 71(2)(b) of the Act.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such notice. Records indicate that the Tenant submitted this application on October 14, 2022. I find the Tenant made this application within the time limit required by section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

In this case, the reasons provided in the One Month Notice correspond to sections 47(1)(d)(ii), (d)(iii), (e)(iii), and (i) of the Act, which state:

Landlord's notice: cause

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

(d) the tenant or a person permitted on the residential property by the tenant has

[...]

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

[...]

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

[...]

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*]; [...]

Based on the evidence presented, I am not satisfied that the Landlord has established cause for ending this tenancy for any of the reasons selected on the One Month Notice. I note the Landlord also argues that the Tenant breached a material term of the tenancy agreement, but did not select this as one of the causes for terminating the tenancy.

I will discuss each of the causes in the following order:

- a. assignment or sublet without consent (s. 47(1)(i))
- b. serious jeopardy, property at significant risk, and illegal activity (ss. 47(1)(d)(ii), (d)(iii), and (e)(iii)), and
- c. breach of material terms (s. 47(1)(h)) (not on One Month Notice).

a. Assignment and Sublet without Consent (s. 47(1)(i))

The Landlord argues that the Tenant has sublet the rental unit without the Landlord's written consent. I find the Landlord's evidence is that the Tenant allowed two foreign tourists to use the rental unit as a short-term rental, likely through VRBO.

According to Residential Tenancy Policy Guideline 19. Assignment and Sublet ("Policy Guideline 19"), "sublet" under the Act refers to the situation where the original tenancy moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement. If the original tenant transfers their rights to a subtenant under a sublease agreement and vacates the rental unit, a landlord/tenant relationship is created and the provisions of the Act applies to the parties. If there is no landlord/tenant relationship, the Act does not apply.

Policy Guideline 19 further states:

Use of rental property for travel/vacation accommodation

Section 4 of the RTA states that the Act does not apply to living accommodations occupied as vacation or travel accommodation and there is no recourse under the RTA for disputes arising from vacation or travel accommodation. However, there have been dispute resolution proceedings arising from tenants who have rented out all or part of their rental unit via AirBnB or other vacation/rental listing

services and their landlord has issued a One Month Notice to End Tenancy (form RTB-33) for the tenant's failure to obtain the landlord's written consent to sublet. As stated above within section C, unless the tenant is acting as an agent for the landlord or has moved out of the unit, this is not a true sublet under the RTA. It is unlikely that a One Month Notice to End Tenancy (form RTB-33) for cause for the tenant's failure to obtain the landlord's written consent to sublet would be successful in these circumstances, although this type of action by a tenant may constitute other breaches of the Act or tenancy agreement for which the landlord might issue a One Month Notice to End Tenancy (form RTB-33).

(emphasis underlined)

I find the Landlord alleges that rental unit was rented out by the Tenant as short-term vacation rental. I find the Landlord does not allege that the Tenant was acting as an agent for the Landlord or had moved out of the rental unit. I find the Tenant was temporarily traveling abroad and has since returned to the rental unit where he continues to reside. Therefore, even if I were to accept that the Tenant had rented out the rental unit to foreign tourists on a short-term basis, I am unable to conclude that this arrangement constitutes a "sublet" of the rental unit under the Act. Therefore, I am not satisfied that the Tenant has sublet the rental unit without the Landlord's written consent under section 47(1)(i) of the Act.

Policy Guideline 19 explains that landlords may wish to include additional terms in the tenancy agreement in order to maintain control over who occupies the rental unit and for what purposes the rental unit is used. As these are not standard terms of a tenancy agreement under the Act, a prospective tenant and the landlord would have to agree to any additional terms being added to the tenancy agreement. If a tenant were to violate such a term, the landlord could issue a One Month Notice to End Tenancy (form RTB-33) for cause for breach of a material term of the agreement.

b. Serious Jeopardy, Property at Significant Risk, and Illegal Activity (ss. 47(1)(d)(ii), (d)(iii), and (e)(iii))

In this case, I accept the Landlord has identified several potential risks and liabilities that may arise due to unlicensed short-term rentals or unapproved commercial activities in a rental unit generally. I note that it would not be feasible for a landlord to vet or approve every person who enters the building, since tenants who may not have additional occupants are still entitled to have guests or visitors. Nevertheless, I accept that the

potential risks and liabilities identified by the Landlord are valid reasons why landlords may want to include terms in the tenancy agreement about permitted occupants and restrictions regarding use of the rental unit.

However, I find the Landlord has not provided sufficient evidence of actual serious jeopardy or significant risk in the present circumstances to justify ending the tenancy under sections 47(1)(d)(ii) or (d)(iii) of the Act.

I find the Tenant contacted VRBO to delete his account shortly after receiving notification from the Landlord, such that compliance with the city bylaw was quickly met. I find there is no evidence to suggest that the city is proceeding with or threatening any action against the Landlord. I find the Landlord has not explained whether there were any actual or likely impacts on the Landlord's insurance policy due to the individuals staying at the rental unit. I find there is insufficient evidence to suggest that the individuals who stayed at the rental unit had engaged in any inappropriate conduct that would have jeopardized the rights of the Landlord or other occupants of the building, or put the property at significant risk.

Under these circumstances, I am unable to conclude that the Landlord has established that the tenancy should be ended under sections 47(1)(d)(ii) or (d)(iii) of the Act.

Regarding cause under section 47(1)(e)(iii) of the Act, Residential Tenancy Policy Guideline 32. Illegal Activities ("Policy Guideline 32") explains that an "illegal activity" would include a "serious violation" of federal, provincial or municipal law. In determining whether the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to matters such as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

Policy Guideline 32 states that for example, a failure to obtain a business license to work at home, so long as this would otherwise not contravene the tenancy agreement, would not be an illegal activity warranting termination of the tenancy. Policy Guideline 32 further states:

Despite the provisions of the Legislation with respect to illegal activities, the parties may agree that one or more specified activities, if conducted in the rental unit or on the residential property may be considered a basis for ending the tenancy. In that event, the ground for ending the tenancy would not be illegal

activity. The ground for terminating the tenancy would be material breach of the tenancy agreement.

I accept that an unlicensed short-term rental would be a violation of the applicable municipal law. However, I find the violation as alleged in this case would not be sufficiently serious to warrant terminating the tenancy for “illegal activity” under section 47(1)(e)(iii) of the Act. I find the Landlord did not provide sufficient evidence to demonstrate that the lawful rights or interests of the Landlord or other occupants were jeopardized or were likely to be jeopardized.

c. Breach of Material Term

Section 47(1)(h) of the Act allows a landlord to issue a one month notice to end tenancy for cause if the tenant (i) has failed to comply with a material term, and (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

As noted above, I find the Landlord argues that the Tenant has breached material terms of the tenancy, in particular clause 13 (additional occupants) and clause 14 (use of the rental unit, including prohibition of use for “illegal, unlawful, commercial or business purposes”). I accept that terms regarding additional occupants in the rental unit and restrictions on using the rental unit for “illegal, unlawful, commercial or business purposes” would be material terms of the tenancy agreement, due to their importance in the overall scheme of the agreement. However, I find the Landlord has not selected a breach of material terms as a reason for issuing the One Month Notice. More importantly, I find the Landlord has not given written notice to the Tenant regarding these alleged breaches and has not provided the Tenant with “reasonable time” to correct them, before issuing a notice to end tenancy.

According to Residential Tenancy Policy Guideline 8. Unconscionable and Material Terms, to end a tenancy agreement for breach of a material term, the party alleging the breach 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.

For the reasons given above, I am not satisfied that the Landlord has established cause for ending this tenancy under the One Month Notice. Accordingly, the One Month Notice is cancelled and of no force or effect.

2. Is the Tenant entitled to reimbursement of the filing fee?

As the One Month Notice has been set aside on this application, I grant the Tenant reimbursement of his filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Tenant to deduct \$100.00 from rent payable to the Landlord for the month of April 2023.

Conclusion

The One Month Notice is cancelled and of no force or effect. This tenancy shall continue until ended in accordance with the Act.

Pursuant to section 72(2)(b) of the Act, the Tenant is authorized to deduct \$100.00 from rent payable for the month of April 2023 on account of the filing fee awarded.

Moving forward, the Tenant is put on notice that he must comply with clauses 13 and 14 of the tenancy agreement with respect to additional occupants and restrictions on using the rental unit for any illegal, unlawful, commercial or business purposes. If the Tenant fails to comply, the Landlord may issue another one month notice to end tenancy for cause to terminate this tenancy.

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: March 25, 2023

Residential Tenancy Branch