



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Providential Developments Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: **OPC, MNDCL, FFL**

Tenants: **CNC, OLC, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act.

The landlord applied for:

- An order of possession for cause pursuant to sections 47 and 55;
- A monetary order for damages or compensation pursuant to section 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenants applied for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both tenants and the landlord attended the hearing. The landlord was represented by a director, MS. Each party acknowledged receipt of the other's Notice of Dispute Resolution Proceedings packages and evidence. Neither party took issue with timely service of documents.

Preliminary Issue

At the commencement of the hearing, both parties confirmed that the tenancy ended on February 28, 2023 when the tenant served the landlord with a notice to end tenancy for that date. The landlord confirmed he does not seek an Order of Possession and the parties agree that the tenants' security deposit has been returned to them.

Consequently, I dismiss the tenants' application for dispute resolution without leave to reapply and I dismiss the landlord's application seeking an Order of Possession for cause. The landlord stated he seeks a monetary order for compensation from the tenants, still.

Issue(s) to be Decided

Is the landlord entitled to be compensated for the tenants' "sublease" of a portion of the rental unit?

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 tenants in this hearing began their tenancy with a different set of landlords on December 15, 2021. The tenancy agreement indicates the rental unit is a house, with no unit numbers depicted in the agreement. The landlord testified that his company purchased the house with the tenancy agreement intact. The tenancy agreement indicates the tenancy is a fixed term, ending on December 15, 2022 and at the end of the fixed term, the tenancy will continue on an month to month basis.

The parties agree that the house has an unauthorized suite with a separate entrance in it. The tenant testified that this suite shares laundry with the upper unit and only has a partition wall in the kitchen. There is an interior door between the two units that doesn't lock and anybody living in the lower unit would have access to the upper unit via an unlocked door. The unauthorized unit does not have its own thermostat, the heat is controlled by the people in the upper unit.

Before signing the tenancy agreement, the tenants sent the landlord a text on November 30, 2021 saying they have a friend looking for a place in town and wanted to ask her “taking the spot downstairs”. The tenants will ensure rent is paid every month regardless of that tenant and she’s happy to meet (the landlord) if he likes. Their landlord responded it was no problem. There may be a slight cost adjustment needed for dual occupancy, insurance etc. The tenants and the landlord at the time signed the tenancy agreement on November 21, 2021.

The current landlord purchased the property with the tenancy agreement intact in June 2022. The landlord acknowledged that they were unaware that the tenants had “sublet” the lower unit to their friend, though admits it was incumbent on himself to ask the previous landlord.

The landlord wanted to renegotiate the lease with the tenants on December 15th because they were not making enough money on the property. The landlord sought to either have the tenants keep renting the entire house at \$2,600.00 (rather than the \$1,900 they were paying) or have the tenants continue renting just the upper portion of the house for \$1,600.00. The tenants refused.

The landlord testified that the tenants were charging their friend \$800.00 per month for the “sublease”. The landlord seeks an order that the tenants compensate him with the \$800.00 per month from the time they purchased the rental property, July 1, 2022 to February 28, 2023, a period of 8 months.

Analysis

The landlord’s position in this case is that the tenants “sublet” a part of their rented property to a “sub-tenant”. In British Columbia, a sublet is created under specific circumstances. See <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/during-a-tenancy/sublet-and-assignment>

When the original tenant moves out of their rental unit and allows someone (the sub-tenant) to have exclusive occupancy of their rental unit and pay the rent for part of the term of the tenancy agreement, it is considered a sublet.

Residential Tenancy Branch Policy Guideline 19 [Assignment and Sublet] states:

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.

The parties agree that the tenants never moved out of the residential property during the tenancy. They remained occupying it throughout. As such, the tenants did not sublet the rental unit to anybody. For the reasons set out below, I find the tenants obtained an occupant/roommate and that the landlord in this case is not entitled to recover compensation from the tenants for complying with the terms of the tenancy agreement they entered into with their previous landlord.

A residential property is defined under section 1 of the Residential Tenancy Act as follows:

"residential property" means

- (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- (c) the rental unit and common areas, and
- (d) any other structure located on the parcel or parcels;

To begin, I find that the tenants rented the entire residential property, not just the upper unit of a house with two units. If the previous landlord had intended on only renting the upper unit, he could have noted it on the tenancy agreement. I find a clear indication in the text message exchange between the tenants and their landlord on November 30, 2021 that the intent was to rent the entire residential property to the tenants, both the upper and the lower portions of the house.

Before entering into the tenancy with the previous landlord, the tenants asked the previous landlord if they could bring in a friend to occupy the "spot downstairs". The previous landlord accepted the friend saying "*there may be a slight cost adjustment needed for dual occupancy...*" Also, based on the tenant's reassurance that they would ensure the rent is paid every month regardless of the tenant means to me that the tenants have taken on an occupant/roommate, not a sublessee.

It is important to note that the tenants were honest with the previous landlord in advising their previous landlord of their intent to take on another occupant in the residential

property **before** entering into the tenancy agreement with the previous landlord. The previous landlord considered what he believed to be fair market value for the residential property at the time and signed the tenancy agreement.

The landlord before me purchased the rental property and I would expect he knew the previous landlord was getting \$1,900.00 per month for it. When the landlord before me purchased the property, the tenancy continued under the same terms as the previous tenancy. The landlord could have rejected the purchase of the property if he considered the rent derived from it to be inadequate.

There is no evidence before me that the landlord should be entitled to any additional rent from these tenants who are complying with the terms of the tenancy agreement they signed with the previous landlord. There have been no breaches of the tenancy agreement or the Act by the tenants and the landlord has not proven to me that he is entitled to anything more than the \$1,900.00 per month as stated in the tenancy agreement he inherited when he purchased the property.

Previously, I found the friend of the tenants occupying the lower section of the residential property is an occupant/roommate. As the tenants fulfilled their obligation to pay full rent with the financial assistance of their roommate, the landlord is not entitled to any additional payment from them. As such, the landlord's application is dismissed without leave to reapply.

Neither party was successful in their applications and neither party's filing fee will be recovered.

Conclusion

Both applications are dismissed without leave to reapply.

This decision is legal, final and binding and 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: April 21, 2023

Residential Tenancy Branch