



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNC, FFT

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

1. cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
2. cancellation of the 10-Day Notice to End Tenancy for unpaid utilities (the 10-Day Notice” pursuant to section 46; and,
3. authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the Act.

DM (the “landlord”) and PL (the “tenant”) appeared at the hearing.

As both parties were in attendance, I confirmed that there were no issues with service of the Notice of Dispute Resolution Proceeding package and evidence. In accordance with sections 88 and 89 of the Act, I find that both parties were served with the other’s application materials.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Should the landlord’s One Month Notice be cancelled?
If not, is the landlord entitled to an Order of Possession?
Should the landlord’s 10-Day Notice be cancelled?
If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed that the tenancy commenced on December 1, 2019. Monthly rent is \$2,030.00 payable on the first of each month. The landlord collected a security deposit in the amount of \$1,000.00 from the tenant which the landlord continues to hold in trust.

The parties agree that the 10-Day Notice was received by the tenant on March 23, 2023, and the One-Month Notice was received by the tenant on March 27, 2023.

The 10-Day Notice is submitted into evidence and indicates that it was issued because the tenant failed to pay rent in the amount of \$2,656.76 following written demand on March 25, 2023.

The landlord testified that the 10-Day Notice was issued because the tenant failed to pay utilities. The landlord conceded that the amount indicated on the 10-Day Notice is incorrect and that the correct amount is \$1,829.08. The landlord submitted that he did not agree to pay half of the utilities as alleged by the tenant.

The tenant testified that the parties have an agreement in which the tenant pays 50% of utilities. In this case, the landlord did not serve them with a formal request for the payment of the utilities. The tenant submitted that they paid the amount listed on the 10-Day Notice in full. Included in the tenant's evidence is a document title "Transaction details – BMO" which shows that the tenant sent the landlord an e-transfer in the amount of \$2,656.76 on March 23, 2023.

The parties agreed that the tenant paid the \$2,656.76 and as a result \$827.71 should be returned from the landlord to the tenant.

The One-Month Notice is submitted into evidence and indicates that it was issued for the following reasons:

- the tenant has allowed an unreasonable number of occupants in the unit/site/property/park;

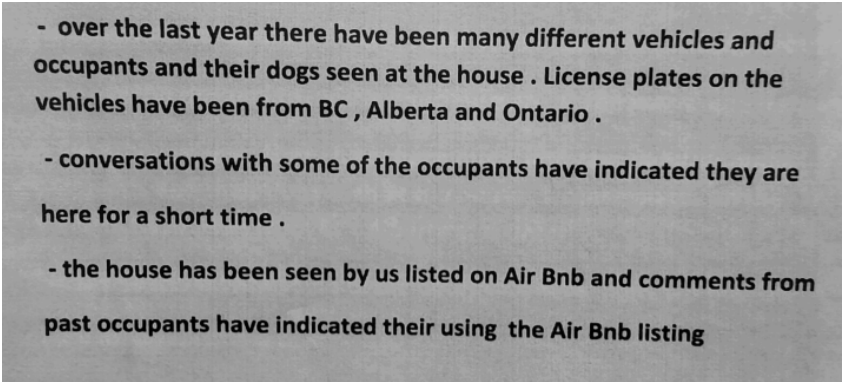
- the tenant knowingly gave false information to prospective tenant or purchaser of the rental property/park; and,
- the tenant has assigned or sublet the rental unit/site/property/park without the landlord's written consent.

In the Details of Cause section, the landlord states the following:

The tenant was the only individual listed on the rental agreement, but he did not reside on the property. The property was subsequently sublet without the landlord's consent. The tenant intentionally removed mandatory clauses to engage in illegal subletting activities. The tenant also intend to obstruct the housing sale.

[Reproduced as written]

The landlord testified that the tenant does not live at the rental address but rather rents it as an AirBnB. Included in the tenant's evidence is a letter from a neighbour of the property which states in part, the following:



- over the last year there have been many different vehicles and occupants and their dogs seen at the house . License plates on the vehicles have been from BC , Alberta and Ontario .

- conversations with some of the occupants have indicated they are here for a short time .

- the house has been seen by us listed on Air Bnb and comments from past occupants have indicated their using the Air Bnb listing

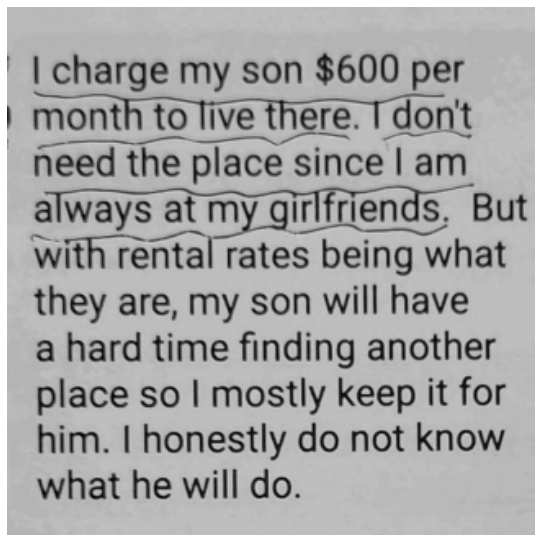
The landlord drew my attention to the photographs included in their evidence which show different vehicles parked in front of the rental property on different dates. The landlord also submitted photographs of numerous beds in the house which he said is inconsistent with the tenant's statement to the landlord that their son is the only person living in the rental house.

The landlord went on to note that the tenant has in the past requested that the landlord remove Term 9 from the Addendum to the Tenancy Agreement (the "Addendum") so that they could let their son use the rental property without violating the terms of the

agreement. Term 9 states: "Other people but family is not allowed to live in the suits more than three days".

The landlord testified that the tenant is using the rental to do business as an Air BnB while not residing at the property. The landlord testified that AirBnB is not covered by their insurance policy. The landlord submitted that they are very concerned that if there was an incident such as a fire or injury to a AirBnB occupant, the landlord's insurance policy would not cover it.

The landlord drew my attention to a text message from the tenant which is set out below.



I charge my son \$600 per month to live there. I don't need the place since I am always at my girlfriends. But with rental rates being what they are, my son will have a hard time finding another place so I mostly keep it for him. I honestly do not know what he will do.

When asked to clarify whether the landlord alleges that the tenant has knowingly given false information to a prospective tenant or purchaser of the rental property or whether the landlord is alleging that they believe the tenant intends to knowingly give false information to a prospective tenant or purchaser of the rental property, the landlord testified that the tenant has given false information to a prospective tenant or purchaser.

In response to the landlord's submissions, the tenant confirmed that their son lives at the rental property and pays him \$600.00 a month. The landlord testified that this is not a sublet, but rather their son is an adult who is contributing to the household.

The tenant testified that they have a girlfriend and spend a lot of time out of the house. However, the tenant stated that themselves and their girlfriend prefer to maintain separate residences. The tenant testified that the house is full of all of their possessions and is

their residence despite the fact that they do not spend as much time there as some people would.

The tenant testified that they have never had a conversation with the landlord about using the rental property as an AirBnB. However, the tenant submitted that they are allowed to have people in his house, and they do that. The tenant testified that they have never made a secret of it, and the landlord has never brought it up.

The tenant testified that they do a little bit of vacation rentals which helps them to be able to afford to rent the house. The tenant's position is that they are legally entitled to have people over for the purpose of vacation rentals. The tenant testified that the landlord is not allowed to dictate who the tenant can have over or how long they can stay. The tenant argued that condition 9 of the Tenancy Agreement is unlawful.

The tenant testified that they attempted to assist the landlord in finding a realtor, but the landlord declined their suggestion. The tenant denied having provided false information to a prospective tenant or purchaser of the rental property.

In closing the tenant argued that contrary to what is indicated on the One Month Notice, they did not allow an unreasonable number of occupants in the rental unit; they did not knowingly give false information to a prospective tenant or purchaser of the rental property; and, they have not assigned or sublet the rental property without the landlord's consent.

Analysis

Based on the testimony and evidence of the parties I find that the 10-Day and One Month Notices were sufficiently served on the tenant on March 23rd, 2023, and March 27th, 2023, respectively.

The undisputed evidence of the tenant is that upon receipt of the 10-Day Notice they paid the amount listed on the 10-Day Notice in full. The documentary evidence provided by the tenant supports that they did so within 5 days. On that basis, I find based on section 46(4)(a) of the Act that the 10-Day Notice has no effect. As a result, I cancel the 10-Day Notice.

The One Month Notice is included in the evidence and indicates that it was issued for the following reasons:

- Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.
- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.

I find the One Month Notice meets the form and content requirements of section 52 of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish on a balance of probabilities, that the One Month Notice is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

After considering the relevant evidence and submissions, for the reasons set out below, I find the landlord has not provided sufficient evidence to support any of the reasons listed on the One Month Notice

Subletting

The landlord alleges that while the tenant was the only individual listed on the rental agreement, they did not reside on the property and the property was subsequently sublet without the landlord's consent.

Policy Guideline 19 discusses sublets as contemplated by the Act and states the following:

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. This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant.

I have considered the submissions and testimony of the parties and I infer that the landlord is suggesting that the tenant sublet the rental property to their son. The undisputed evidence is that the tenant's son resides at the rental property and pays the tenant \$600.00 per month.

However, I accept that while the tenant does not spend a significant amount of time at the rental property, I find that the tenant not vacated the rental unit or removed his personal belongings. While the tenant's son pays a portion of the rent to the tenant, I do not accept that the tenant has transferred their rights under the tenancy agreement to their son. On that basis, I do not accept that the tenant sublet the rental property to his son.

Finally, I note that term 9 of Addendum states: "Other people but family is not allowed live in the suits more than three days". I interpret this term to mean family of the tenant are permitted to reside in the rental unit. Therefore, I find that the tenant has not breached the terms of the Tenancy Agreement by allowing his son to reside in the rental unit.

Ultimately, the landlord has not provided sufficient evidence to meet the onus which is upon them to support that tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

Unreasonable Number of Occupants

The landlord alleges that the tenant has allowed an unreasonable number of occupants in the property. I have considered the landlord's submissions; however, I find that the primary occupants of the rental property are the landlord and their son. The landlord has provided photographic evidence indicating that there are at least three bedrooms in the rental property, and, on that basis, I do not accept that two primary occupants is an unreasonable number.

With regard to the tenant using the property as an Air BnB, I find the landlord has not provided sufficient evidence to support that the vacation rental guests are occupants, meaning that they reside at the rental property. In my view, in order for a guest to be deemed an occupant, they would be required to reside at the rental property for an extended period of time. The evidence before me supports that the vacation rental guests have been present for short periods of time. Moreover, the landlord has not provided evidence to support that an unreasonable number of vacation rental guest have been allowed at the rental unit at any given time. Ultimately, I find that the

landlord has not provided sufficient evidence to meet the onus which is upon them to support tenant allowed an unreasonable number of occupants in the property.

False Information

The landlord alleges that the tenant knowingly gave false information to prospective tenant or purchaser of the rental property. However, in the details section of the Notice, the landlord states that the tenant intends to obstruct the housing sale. During the hearing, the landlord testified that the tenant knowingly gave false information to prospective tenant or purchaser of the rental property and the tenant denied the same.

I find the landlord's testimony during the hearing unsupported by any evidence and inconsistent with his allegation in the details section of the One Month Notice. On that basis, I find in favour of the tenant. While the landlord may believe the tenant may give false information to a prospective tenant or purchaser, the landlord has not provided sufficient evidence to support this reason for issuing the One Month Notice.

Ultimately, I find that the landlord has not met the onus which is upon them to prove the reasons for which they issued the One Month Notice. Therefore, I cancel the One Month Notice. The tenancy will continue until such time as it is ended in accordance with the Act.

The parties brought up matters during the hearing that are not relevant to the applications before me. My decision is focused on the applications properly before me.

Caution

During the hearing, the landlord spoke at length about their concerns regarding the tenant carrying on a vacation rental business at the rental property. The landlord noted that they have concerns that their insurance would not cover incidents such as fire or personal injury that may result from the tenant's business.

I have considered the landlord's submissions and I find it important to note that while the landlord has not proven any of the reasons for which this One Month Notice was issued, the landlord has established that the tenant is operating a vacation rental business from the rental property. Should these activities continue, I find this may be cause for the landlord to issue another One Month Notice for different reasons.

As the tenant was successful in their applications, I find that they are entitled recover the filing fee for this application from the landlord. In accordance with the off-setting provisions of section 72 of the Act, I order that the tenant may withhold \$100 from ONE future payment of rent.

Finally, while both the tenant and landlord brought up other issues during the hearing, I have only considered the applications before me, namely whether the tenant is entitled to cancellation of the notices.

Conclusion

The 10-Day Notice and One-Month Notice are cancelled and of no force or effect. The tenancy will continue until such time as it is ended in accordance with the Act.

The tenant may withhold \$100 from ONE future payment of rent.

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: May 25, 2023

Residential Tenancy Branch