Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

The applicants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The applicants ask me for the following orders against the landlords.

1. Cancellation of a One-month Notice to End Tenancy for Cause, issued on or about 10 April [the 'Notice'].
2. Reimbursement for the $100.00 filing fee for this application.

The landlords appeared at the hearing on 30 May 2023. Only Applicants A appeared at this hearing: Applicants B did not appear.

Issues to be Decided

Are Applicants A tenants of the landlords?

Did the Notice end the tenancy?

And should the landlords reimburse the tenants for the cost of filing this application?

Preliminary Matter - Non-appearance at the Hearing

Applicants B did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 1100 hours and lasted an hour.

Applicants A told me that Applicants B knew of the hearing, and had spoken with them about it about two weeks prior.

Rule 7.3 of the RTB Rules of Procedure reads:

> 7.3 Consequences of not attending the hearing
>
> If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Applicants B failed to attend this hearing, but I conducted it in their absence. Applicants A asserted that Applicants B knew of this hearing and how to participate.

Background and Evidence

The landlords told me that Applicants B began renting the unit from them in 2007. Applicants B pay rent to the landlords with a series of post-dated cheques.

Late last year, Applicants B told the landlords that they were leaving town for a while to care for a friend suffering from cancer. Applicants B also said that while out of town, a friend of theirs, ‘Jane Doe’, would stay in the unit to look after it.

Shortly after this conversation, the landlords themselves left town. When they returned in the new year, they discovered Applicants A living in the unit. The landlords did not know who Applicants A were, but they were sure that Applicants A were not Jane Doe.

The landlords told me that they never agreed with Applicants A to rent the unit to them. The landlords never had a chance to vet Applicants A as prospective tenants. And the landlords argued that tenants of the unit have been Applicants B since 2007 and that has not changed.

As a result, the landlords issued the Notice. In drafting the Notice, the landlords:

1. used the form approved by the RTB;
2. signed and dated the Notice;
3. recorded the name of Applicants B and the address of the rental unit;

4. recorded the effective date of the Notice as 9 May 2023;
5. stated the basis for the Notice as, ‘Tenant has assigned or sublet the rental unit/site/property/park without landlord’s written consent’.

The landlords told me they posted the Notice on the door of the unit on 5 April.

The landlords told me that they believe Jane Doe never lived in the unit. They also said that they have no written agreement with any of the applicants that anyone other than Applicants B could rent the unit.

Applicants A told me the following about the living arrangements at the unit:

1. Jane Doe does not live in the unit: she lives in a different city.
2. Only Applicants A live in the unit: Applicants B are not returning to live in the unit.
3. They did not agree with Applicants B on a date when Applicants A would move out of the unit: the arrangement was open-ended.
4. They have now been living in the unit for six months, during which time neither Jane Doe nor Applicants B have lived there.
5. They pay rent to Applicants B, not to the landlords.
6. They have no agreement with the landlords to live in the unit: their only agreement to live there is with Applicants B.

Analysis

I have considered all the statements made by the parties, and documents referred to by them. And I have considered all the arguments made by the parties.

Are Applicants A tenants of the landlords?

The landlords and Applicants A agree that they do not have an agreement for Applicants A to live in the unit. So, Applicants A are not directly tenants of the landlords.

But are Applicants A subtenants of Applicants B? Or have Applicants B assigned their tenancy to Applicants A?

In answering these questions, I rely upon, 'Residential Tenancy Policy Guideline 19: Assignment and Sublet' [the 'Guideline'].

That Guideline tells us that to either sublet or assign a tenancy, the original tenant must first have the written consent of the landlord. Applicants B do not have that in this case. The landlords deny giving such written consent, and Applicants A did not claim to have it.

Also, the Guideline notes that for a subtenancy to be lawful, it must be for a period shorter than the term of the original tenant's rental agreement. Applicants A told me that the arrangement was open-ended: that is, it had no end date, and therefore cannot have been for a period shorter than Applicants B's agreement with the landlords.

All of this means that Applicants A are not subtenants of Applicants B, nor have Applicants B assigned their tenancy to Applicants A.

Did the Notice end the tenancy?

Section 52 of the Act tells us that for a notice to end tenancy to be effective and end a tenancy:

1. a landlord must sign it and date it;
2. it must give the address of the rental unit, and state the effective date of the notice;
3. it must also state the grounds for ending the tenancy; and
4. it must be in an RTB form.

Based on the uncontested statements by the landlords regarding the Notice, I find the Notice is an effective one, and should be upheld. As the landlords served the Notice by posting it on the door of the unit on 5 April, I deem that the tenants (Applicants B) received the Notice on 8 April (*per* section 90 (a) of the Act).

And, as set out above, I am satisfied that the applicants did not have the written consent of the landlords to assign or sublet the tenancy or unit. And, therefore, the landlords have cause to end the tenancy because of Applicants A residing in the unit for the past several months.

Conclusion

I make an Order of Possession in favour of the landlords. This order is effective two days after the landlords serve it upon the applicants. If the applicants of the rental unit fail to comply with my order, then the landlords can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

At the end of the tenancy the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Tenants and landlords both have an obligation to complete a move-out condition inspection at the end of the tenancy. To learn about obligations related to security deposits, damage and compensation, search the RTB website for information about after a tenancy ends.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 1 June 2023

Residential Tenancy Branch