



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, RR, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- an order cancelling a notice to end the tenancy for cause;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing with an Interpreter, who was affirmed to well and truly interpret these proceedings from the English language to the tenant's Native language and from the tenant's Native language to the English language to the best of the Interpreter's skill and ability. An agent for the landlord also attended.

The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, I alerted the parties to the Rules of Procedure which indicate that multiple applications made in a single application must be related, and the hearing focused on the application for an order cancelling a notice to end the tenancy.

The parties agree that all evidence has been exchanged, all of which has been reviewed and the evidence I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy For Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on November 1, 2022 and reverts to a month-to-month tenancy after October 31, 2023, and the tenant still resides in the rental unit. Rent in the amount of \$2,100.00 is payable on the 1st day of each month. On October 10, 2022 the landlord collected a security deposit from the tenant in the amount of \$1,050.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a condominium apartment, and the landlord does not reside on the property.

The landlord's agent further testified that the tenant was served with a One Month Notice to End Tenancy For Cause (the Notice) by registered mail on May 26, 2023. A copy of the Notice has been provided for this hearing and it is dated May 25, 2023 and contains an effective date of vacancy of June 30, 2023. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - put the landlord's property at significant risk;
- Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

With respect to the first reason for issuing the Notice, the landlord's agent testified that because of a complaint to police about a sexual harassment of another tenant, the landlord felt that the landlord could be liable since the landlord knew about the complaint, and the landlord is not sure if the behaviour will continue or not.

With respect to the second reason for ending the tenancy, the landlord's agent testified that the tenant had advertised a "den" of 15 square feet for rent on Facebook Marketplace. The room was rented from November 7, 2022 to December 14, 2022, for a total rent of \$3,510.00. The tenant did not have permission from the landlord to sublet. It must have been a pre-planned venture since it started at the beginning of the tenancy, and the tenant has had 3 sub-tenants since November 7, 2022. Another tenant in the building called the landlord about it, and the concierge confirmed what the

other tenant told the landlord's agent. The tenancy agreement specifies no subletting without the landlord's written consent.

The tenant testified that in admitting a mistake, the tenant ought to have made the sub-tenants roommates. The tenancy agreement states that the landlord cannot limit the number of guests, provided that the number is reasonable. The tenant received \$800.00 from the guests.

The tenant intended to offer one of the guests the living room space, but the guest preferred to use the den, and did not provide any notice to move out.

SUBMISSIONS OF THE LANDLORD:

The facts indicate that the tenant advertised and rented a portion of the rental unit on 2 occasions on a lease, and to 1 other person without a lease. The tenant has been renting without permission from the landlord.

SUBMISSIONS OF THE TENANT:

The landlord is preventing the tenant's guests from exiting from the front door of the apartment, which lasted for about 2 hours. There was no follow-up to what the landlord was told, yet the harassment, physically and morally that the tenant had to endure because of the landlord's agent provoked anxiety, stress and fear to the point that the tenant had to consult a specialist. The tenant did not move out of the rental unit, and still resides in the apartment.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause (the Notice) and I find that it is in the approved form and contains information required by the *Act*.

Firstly, I fail to see how an unproven allegation of sexual harassment or assault puts the landlord's property at significant risk. Therefore, I find that is not a valid reason for ending the tenancy.

With respect to the second reason for ending the tenancy: Tenant has assigned or sublet the rental unit without the landlord's written consent, I refer to Residential Tenancy Policy Guideline #19 – Assignment and Sublet, which states, in part:

C. SUBLETTING Sublets as contemplated by the Residential Tenancy Act.

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 subtenant 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. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement.

Occupants/roommates - Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act. 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. 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 apply to the parties. If there is no landlord/tenant relationship, the Act does not apply. Roommates and landlords may wish to enter into a separate tenancy agreement to establish a landlord/tenant relationship between them or to add the roommate to the existing tenancy agreement in order to provide protection to all parties under the legislation.

In this case, since the tenant has not vacated the rental unit but invited roommates, it is not a sublet, and therefore not a valid reason for ending the tenancy.

The One Month Notice to End Tenancy For Cause dated May 25, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

Since the tenant has been partially successful with the application, the tenant is also entitled to recover the \$100.00 filing fee from the landlord. I grant a monetary order in favour of the tenant as against the landlord in that amount and I order that the tenant be permitted to reduce rent for a future month by that amount, or may serve the order on the landlord and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy For Cause dated May 25, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

The balance of the tenant's application is hereby dismissed with leave to reapply.

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: August 11, 2023

Residential Tenancy Branch