



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPC FF

Tenant: AS CNC ERP FF LA OLC PSF RP

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord's Application for Dispute Resolution was received by the Residential Tenancy Branch on August 8, 2016 (the “Landlord's Application”).

The Landlord applied for the following relief pursuant to the *Act*: an order of possession based on a 1 Month Notice to End Tenancy for Cause, dated July 25, 2016 (the “1 Month Notice”); and an order granting recovery of the filing fee.

The Tenant's Application for Dispute Resolution is dated July 29, 2016 (the “Tenant's Application”).

The Tenant applied for the following relief pursuant to the *Act*: an order permitting her to assign or sublet the rental unit; an order cancelling the 1 Month Notice; an order requiring the Landlord to make emergency repairs for health or safety reasons; an order granting recovery of the filing fee; an order permitting the Tenant to change the locks on the rental unit; an order compelling the Landlord to comply with the *Act*, regulations or the tenancy agreement; an order compelling the Landlord to provide services or facilities required by the tenancy agreement or law; and an order requiring the Landlord to make repairs to the unit, site or property.

The Landlord and the Tenant attended the hearing on their own behalves. Both parties provided a solemn affirmation.

The Landlord testified he served the Notice of a Dispute Resolution Hearing and supporting evidence (49 pages) by registered mail on August 9, 2016. He provided a

copy of a Canada Post Customer Receipt, dated August 9, 2016, in support. The Tenant denied receipt of the Landlord's evidence. However, pursuant to section 90 of the *Act*, documents served by registered mail are deemed to be received five days later. Accordingly, I find the Tenant is deemed to have been duly served with the Notice of a Dispute Resolution Hearing and supporting evidence on August 14, 2016.

The Landlord confirmed receipt of the Tenant's Application and supporting evidence (44 pages), which was sent by regular mail on August 7, 2016.

Both parties submitted late evidence contrary to the Residential Tenancy Branch Rules of Procedure. The Landlord's late evidence (5 pages) was received at the Residential Tenancy Branch on September 21, 2016. The Tenant's late evidence (3 pages) was received at the Residential Tenancy Branch on September 8, 2016. The parties' late evidence has not been considered.

The parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The parties were advised that Rule 2.3 of the Residential Tenancy Branch Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. In these circumstances, I find it appropriate to exercise my discretion to dismiss the Tenant's claims that are unrelated to the 1 Month Notice. Accordingly, this Decision will address only the relief sought in the Landlord's Application, and the Tenant's Application to cancel the 1 Month Notice and to recover the filing fee. The Tenant is granted leave to reapply for the remainder of the relief sought at a later date.

Issues to be Decided

1. Is the Landlord entitled to an order of possession based on the 1 Month Notice?
2. Is the Landlord entitled to an order granting recovery the filing fee?
3. Is the Tenant entitled to an order cancelling the 1 Month Notice?
4. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed a month-to-month tenancy began on September 1, 2009. Currently, rent in the amount of \$490.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$212.50 at the beginning of the tenancy.

The Landlord submitted that the Tenant is in violation of the tenancy agreement and the *Act* by assigning the tenancy agreement or subletting the rental unit to AirBnB guests without the Landlord's written consent.

The Landlord submitted with his documentary evidence a copy of the tenancy agreement. He asserted the AirBnB rentals are in contravention of section 1 of the tenancy agreement, which states:

"I/We hereby agree to lease the above premises...

...

AND COVENANT AS FOLLOWS;

...

(d) To neither assign nor sublet without leave

...

(h) To use premises as RESIDENCE only".

[Reproduced as written.]

The Landlord testified the Tenant is not using her unit as a residence only, but continues to rent her unit to AirBnB guests, despite being asked to discontinue this activity.

In an email from the Landlord to the Tenant dated June 29, 2016, included with the Tenant's documentary evidence, the Landlord raised the issue of AirBnB rentals. It states:

"I believe there are 2 points that apply in our original agreement to the present situation regarding your suite. Under covenant as follows clauses, one point (d) To neither assign nor sublet without leave and (h) To use premises as residence only."

Further, included with the Landlord's documentary evidence was a copy of a type-written letter to the Tenant. The Landlord's written submissions indicate the letter was posted on the Tenant's door on July 16, 2016. It states:

"Further to our phone conversation regarding the suite at [Tenant's address], which you have rented from me. I am, as landlord of the premises, putting in writing a request for you to immediately cease and desist from: advertising, assigning or subletting said suite to another party. The agreement signed by you on August 6, 2009 states that you are not to assign or sublet without leave. Therefore your actions have contravened our agreement. You will be served a notice to end tenancy if you continue this contravention."

[Reproduced as written.]

During the hearing, the Tenant acknowledged receipt of the Landlord's letter.

However, according to the Landlord, the Tenant did not stop renting to AirBnB guests. In support, the Landlord provided screenshots of the Tenant's AirBnB listing, purported to have been taken on July 21, August 16 and August 24, 2016. The Landlord submits the screenshots confirm the unit was almost fully booked with AirBnB guests in July and August 2016. Accordingly, the Landlord issued the 1 Month Notice, which was served by posting a copy on the door of the Tenant's rental unit. A Proof of Service form submitted with the Landlord's evidence confirms service of the 1 Month Notice on July 25, 2016.

In reply, the Tenant did not disagree she rents the unit to guests through AirBnB when she is out of town for work or on vacation, which can be for several weeks at a time. She stated that, for security reasons, she feels better having someone in the rental unit when she is away. She feels she should be permitted to have guests in her home.

The Tenant disagrees with the Landlord's submission that is fully booked. She stated the calendar on her AirBnB profile shows booked and blocked nights, not nights that guests are staying in the unit. The Tenant also testified that she has sporadically rented her unit to approximately twelve AirBnB guests in the last four months.

Although the Tenant also raised issues concerning locks and access to the rental unit, health issues arising from her proximity to Smart Meters, and pests such as cockroaches and mice, she wishes to remain in the rental unit due to the favourable rental rate.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

Section 47 of the *Act* permits a landlord to end a tenancy if the tenant assigns the tenancy agreement or sublets the rental unit without obtaining the landlord's written consent, as required by section 34 of the *Act*.

In this case, the Landlord asserted that the Tenant assigned the tenancy agreement or sublet the rental unit without the Landlord's consent, contrary to the tenancy agreement and the *Act*.

Accordingly, the Landlord issued the 1 Month Notice, which was served on the Tenant by posting a copy on the door of the rental unit on July 25, 2016. Pursuant to section 90 of the *Act*, documents served in this manner are deemed to be received three days later. I find the Tenant is deemed to have received the 1 Month Notice by July 28, 2016.

Residential Tenancy Branch Policy Guideline 19 clarifies the meanings of subletting as follows:

"A sublease is a lease given by the tenant or lessee of residential premises to a third person (the sub-tenant or sub-lessee). A sublease can convey substantially the same interest in the land as is held by the original lessee, however such a sublease must be for a shorter period than the original lease in order that the original lessee can retain a reversionary interest in the property. The sub-tenant does not take on any rights or obligations of the original tenancy agreement that are not contained in the sub-agreement, and the original lessee remains the tenant of the original lessor, and is the landlord of the sub-tenant."

The Tenant concedes she sporadically rents the unit to AirBnB guests. During the hearing, she estimated she has rented the unit roughly twelve times in the last four

months. Accordingly, I find the Tenant has sublet the rental unit without the Landlord's consent, contrary to the tenancy agreement and the *Act*.

In light of the above findings, I have determined the Landlord is entitled to an order of possession, which will be effective on September 30, 2016, at 1:00 p.m.

As the Landlord has been successful, I award \$100.00 as recovery of the filing fee, and order that this amount may be deducted from the security deposit.

Conclusion

The Landlord is granted an order of possession, which will be effective on September 30, 2016, at 1:00 p.m. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

Subject to the exercise of my discretion to dismiss unrelated claims with leave to reapply, described under "Preliminary and Procedural Matters", the Tenant's Application is dismissed without 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: September 22, 2016

Residential Tenancy Branch