



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1681 HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC FF

Introduction

The tenant applied under the *Residential Tenancy Act* (the “Act”) to cancel a 1 Month Notice to End Tenancy for Cause dated October 21, 2016 (the “1 Month Notice”) and to recover the cost of the filing fee.

The tenant and two agents for the landlord (the “agents”) attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties had the dispute resolution process explained to them and were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me.

Neither party raised any concerns regarding the service of documentary evidence.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

A two-year fixed-term tenancy agreement was submitted in evidence. The tenancy began on September 1, 2016. Monthly rent in the amount of \$1,800.00 is due on the first day of each month. The tenant paid a security deposit of \$900.00 at the start of the tenancy. The tenant continues to occupy the rental unit.

The tenant confirmed that she was served on October 21, 2016 with the 1 Month Notice dated October 21, 2016 alleging three causes. The first cause indicated on the 1 Month Notice is that the tenant or a person permitted on the property by the tenant has put the landlord’s property at significant risk. The second cause indicated on the 1 Month Notice is that the tenant has engaged in illegal activity that has, or is likely to jeopardize a

lawful right or interest of another occupant or the landlord. The third cause indicated on the 1 Month Notice is that the tenant has assigned or sublet the rental unit/site without landlord's written consent.

The tenant submitted her Application to dispute the 1 Month Notice on October 26, 2016 which is within 10 days of being served with the 1 Month Notice on October 21, 2016. The effective vacancy date on the 1 Month Notice is listed as November 30, 2016.

The agents referred to a printout of the rental unit being advertised on an airbnb website. The tenant confirmed that she posted the ad on the airbnb website but denied that her ad was operational and that she only posted the ad to receive an "end of the year bonus" from the website. The landlord presented further documentary evidence, an e-mail, from their insurance provider indicating that the landlord's house insurance would not cover a commercial airbnb business being operating in the home.

During the hearing, the tenant was advised that I did not accept her explanation regarding the airbnb ad not being operational. I find the tenant's explanation to be unreasonable and unbelievable and inconsistent with the details of the ad which clearly indicate the details of the rental unit on the airbnb website, the website printout of which is dated October 21, 2016.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

1 Month Notice to End Tenancy for Cause – Although the tenant confirmed during the hearing that she had posted the airbnb ad on the website as per the documentary evidence submitted in evidence by the landlord, the tenant alleged the ad was not functioning and could not accept reservations. As noted above, I find the tenant's testimony to be both unreasonable and unbelievable on the balance of probabilities and as a result, I prefer the testimony of the agents over that of the tenant as the landlord submitted an e-mail confirmation that the landlord's house insurance would not cover an airbnb operation in the rental unit and provided evidence of the airbnb ad dated October 21, 2016. Therefore, I find the landlord has met the burden of proof by proving that that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk by listing the rental unit on an airbnb website and putting the landlord's

property at significant risk by not being covered by the landlord's house insurance due to the airbnb operation.

Given the above, **I dismiss** the tenant's application in full, without leave to reapply. **I uphold** the landlord's 1 Month Notice. Based on the above, I find that there is no need to consider the remaining two causes listed on the 1 Month Notice.

The agents confirmed that the tenant has paid money for use and occupancy of the rental unit for December 2016. As a result, the earliest order of possession date would be December 31, 2016 at 1:00 p.m. Section 55 of the *Act* states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[my emphasis added]

Given the above and taking into account that I find the 1 Month Notice complies with section 52 of the *Act*, I find that the landlord is entitled to an order of possession effective **December 31, 2016 at 1:00 p.m.** I find the tenancy ended on November 30, 2016 the effective date of the 1 Month Notice and that the tenant has been over-holding the rental unit since that date.

As the tenant's Application fails, I do not grant the tenant the recovery of the cost of the filing fee.

Conclusion

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause is dismissed.

The 1 Month Notice issued by the landlord is upheld.

The landlord has been granted an order of possession effective December 31, 2016 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 14, 2016

Residential Tenancy Branch