



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MDSD & FF

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to cancel the one month Notice to End Tenancy dated September 23, 2016 and setting the end of tenancy for October 31, 2016. .
- b. A monetary order in the sum of \$1266 plus reimbursement of 7 months rent.
- c. An order that he landlord provide services or facilities required by law
- d. An order to suspend or set conditions on he landlord's right to enter the property.
- e. An order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld.
- f. An order that the tenant recover the cost of the filing fee

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession
- b. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the one month Notice to End Tenancy was served on the Tenant by posting on October 13, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was served on the other by mailing, by registered mail to where the other party resides.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated September 23, 2016?
- b. Whether the tenant is entitled to a monetary order and if so how much.
- c. Whether the tenant is entitled to an order that the landlord comply with the Act, regulation and/or the tenancy agreement?
- d. Whether the tenant is entitled to recover the cost of the filing fee?
- e. Whether the landlord is entitled to an Order for Possession?
- f. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

On December 23, 2011 the parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on January 1, 2012, end on December 31, 2012 and become month to month after that. The rent was \$1050 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$525 on December 20, 2011. The rent has been increased to \$1206.63

The rental unit has three bedrooms and is approximately 1000 square feet in size. The landlord gave evidence that in September 2013 the tenant had two roommates who were unrelated to her. There have been four different roommates between September 2013 and February 2015. An arbitration hearing was held on May 13, 2015. The decision of the arbitrator records an agreement between the parties in which "The tenant agreed to provide information regarding any future sub tenants and rent to them only with the landlord's approval."

The landlord gave evidence that he has received information on two the roommates and has since learned there has been five different sub-tenants who he received no information about and did not give the tenant approval for these sub tenants. The tenant agreed and has paid the landlord \$45 for each roommate per month in addition the regular rent.

The landlord testified the tenant is a difficult tenant. The tenant and the landlord's agent had a personal relationship at one time. Part of the problem relates to tension between these two as a result of the termination of that relationship.

The grounds set out in the one month Notice to End Tenancy are as follows:

- Tenant is repeatedly late paying rent

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - put the landlord's property at significant risk
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so
- Tenant has assigned or sublet the rental unit/site without landlord's written consent

Tenant's Application:

Application to Cancel the one month Notice to End Tenancy:

The Policy Guidelines provides that 3 late rent payments are the minimum number necessary in order to terminate a tenancy on the basis of repeated late payment of rent.

I accept the evidence of the tenant failed to pay the rent for July 2015 until July 7, 2015. However, I do not accept the evidence of the landlord that the tenant paid the rent for September 2016 late. The agent testified he received it on September 2, 2016. However, I accept the evidence of the tenant that she placed it in his mail slot on September 1, 2016 around 10:00 p.m. The landlord failed to prove these are late payments.

The landlord also relies on the following payments for utilities:

- February 26, 2013 paid on March 22, 2013
- March 15, 2013 hydro bill and March 22, 2013 Fortis bill received April 15, 2013
- March 18, 2015 hydro bill and March 20, 2015 Fortis bill not paid until April 20, 2015:
- June 16, 2016 hydro bill and June 23, 2016 not paid until July 21, 2016.

Section 46(6)

46(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,
the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The triggering event to establish a late payment of a utility bill is 30 days after written demand has been given. No written demand was given for the 2013 and 2015 bills.. The agent for the landlord testified he gave written demand for the 2016 bills on July 19. The bills were paid on July 21, 2016. I determined the landlord has failed to satisfy the requirements of section 46(6) and has failed to prove the tenant has failed to pay her share of the utility within 30 days after receiving written demand.

Tenant has significantly interfered with or unreasonably disturbed the landlord and has jeopardized the lawful right of the landlord.

I determined the landlord failed to prove the tenant has significantly interfered with or unreasonably disturbed the landlord by complaining about the lower Tenant. Further, the fact the tenant has complained to the City of Vancouver about the rental property and as a result the landlord will have to make changes to the property is not a ground to end the tenancy. The law provides that the landlord is obliged to follow the City of Vancouver bylaws. The reporting of breaches to the City is not grounds to end the tenancy even if it has caused stress to the landlord and may require the landlord to make improvements.

The tenant has assigned or sublet the rental unit without the landlord's written consent:

Section 34 of the Residential Tenancy Act provides as follows:

“Assignment and subletting

34 (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

(2) If a fixed term tenancy agreement is for 6 months or more, the landlord must not unreasonably withhold the consent required under subsection (1).

(3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.”

Policy Guideline #13 includes the following:

Occupants

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

Policy Guideline #19

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 and has a subletting agreement with a sub-tenant. 'Sublet' is also used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. In determining if a scenario such as this is a sublet as contemplated by the Act, the arbitrator will assess whether or not the relationship between the original tenant and third party constitutes a tenancy agreement and a landlord/tenant relationship, as discussed in the "sublets as contemplated by the RTA" section above. If there is a landlord/tenant relationship, 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.

I determined the landlord has failed to establish sufficient grounds to end the tenancy on the basis that the tenant has "sublet the rental unit without obtaining the landlord's written approval for the following reasons.

- The relationship between the Tenant and her roommates is not a “sublet” as defined by the Act. At all times the Tenant remained in the rental unit.
- The arrangement between the Tenant and her roommates were often short term and did not create a tenancy.
- I determined the Tenant advised the landlord of her roommates and the landlord accepted an additional rent payment of \$45 per month per roommate. In so doing the landlord is estopped from now basing a Notice to End Tenancy on that ground.
- The rental unit is 3 bedrooms in size and could handle the tenant and two additional people.

Landlord’s Claim the Tenant has breached a material term of the tenancy agreement:

The landlord failed to prove that the tenant breached a material term of the tenancy agreement. Even if they did, the landlord failed to give the tenant written notice and a reasonable opportunity to correct the situation.

The materials filed by the landlord alleged the Tenant gave false information to prospective tenants. The materials state “The tenant did not advise any of the sub tenants or prospective sub tenants that they would have to meet the landlord approval before moving in. The landlord failed to prove this is sufficient to give the landlord grounds to end the tenancy.

As a result I determined the landlord failed to establish sufficient cause to end the tenancy. I ordered that the Notice to End Tenancy shall be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

Tenant’s Application for a Monetary Order

Section 7 of the Act states as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires the following:

- a. Proof that the damage or loss exists
- b. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- c. Verification of the Actual amount required to compensate for loss or to rectify the damage
- d. Proof that the claimant followed section 7(2) of the Act by doing whatever is reasonable to minimize the damage or loss

With respect to each of the Tenant's claims I find as follows:

- a. I dismissed the Tenant's claim of \$30 to retrieve copies of older cheques. This item refers to a cost of litigation. The only jurisdiction an arbitrator has dealing with costs is the filing fee costs.
- b. I dismissed the Tenant's claim of \$636 for two days lost wages. Again the tenant is claiming for time lost in preparing for litigation. An arbitrator does not have the jurisdiction to make such an award.
- c. I dismissed the tenant's claim of \$600 for the loss of laundry use and no access to the electrical panel. The tenant failed to prove the landlord denied use to the laundry facilities and failed to present evidence verifying the actual loss.
- d. I dismissed the Tenant's claim of 2 months free rent for acting in bad faith and breach of privacy. The tenant failed to present sufficient proof to establish this claim.
- e. I dismissed the Tenant's claim of 5 months free rent for being subject to illegal suite and illegal tenant and ongoing deliberate harassment. The landlord is not responsible for the ongoing tensions that exist between the tenant and the downstairs tenant who is now acting as an agent for the landlord.

In summary I dismissed the Tenant's claim for a monetary order without leave to re-apply. The tenant has been successful with her application to cancel the Notice to End Tenancy but unsuccessful with her application for a monetary order. I determined the Tenant is entitled to recover one half of the cost of the filing fee. I ordered that the landlord pay to the Tenant the sum of \$50 which represents $\frac{1}{2}$ of the cost of the filing fee such sum may be deducted from future rent.

Landlord's Claim:

For the reasons set out above I determined the landlord has failed to establish sufficient grounds to end the tenancy.

I dismissed the landlord's claim for an Order for Possession based on the tenant's breach of the settlement agreement between the parties that was set out in the arbitrator's decision on May 15, 2015. The decision refers to providing the landlord with information relating to individuals who were subletting from the Tenant. For the reason set out I determined this is not a sub let. Further, even if one considered that the agreement covered roommates, the settlement does not identify the remedy available if the tenant breached it. Given the history of roommates which the landlord was aware of and accepted additional rent, I determined this cannot be considered a breach of a material term that gave the landlord the right to terminate the tenancy. Finally, the tenant testified she told the landlord of her roommates. The settlement does not require that the Tenant give the information in writing.

As a result I dismissed the landlord's claim without leave to re-apply. I dismissed the landlord's application to recover the cost of the filing fee as the landlord has not been successful with his application.

Conclusion:

In summary I ordered that the one month Notice to End Tenancy be cancelled. I dismissed the Tenant's application for a monetary order. However I determined the tenant is entitled to ½ of the cost of the filing fee or the sum of \$50 such sum may be deducted from future rent. I ordered that the landlord's application be dismissed without liberty to re-apply.

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: December 05, 2016

Residential Tenancy Branch