



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62;

The tenant and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord confirmed receipt of the tenant's application for dispute resolution including the amendment seeking to recover the filing fee and confirmed that the landlord did not provide any documentary evidence for this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the application.

The tenant did not provide testimony or evidence in relation to his application for an order to suspend conditions on the landlord's right to enter or order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement. Therefore these portions of his claim are dismissed without leave to reapply.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee paid for this application, from the landlord?

Background and Evidence

The tenant owned the rental unit until July 2016 at which time he sold the unit to the current landlord. Although neither party provided a copy of the sales agreement, both parties testified that the sales agreement indicates the seller, and only the seller may rent the unit from the purchaser for a fixed term effective January 1, 2017 until December 31, 2017 at the rental rate of \$1,500.00 per month. The parties agreed that a written tenancy agreement was not drafted by the parties and a security deposit was not paid.

The tenant testified he received the landlord's 1 Month Notice dated February 8, 2017 by way of registered mail on an undisclosed date. The 1 Month Notice indicates an effective move-out date of March 8, 2017. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant has assigned or sublet the rental unit/site without landlord's written consent

Landlord

The landlord testified that she is uncertain who was living in the rental unit at the time of purchase; however she came to believe the tenant was not living in the unit when she met him January 5, 2017. On this date the landlord met the tenant in the unit and the tenant provided 12 postdated cheques in the amount of \$1,500.00. Despite the tenant telling the landlord he lived in the unit with his child, the landlord did not observe toys or belongings which would indicate a child lived in the unit.

On an undisclosed date the landlord encountered an individual who indicated he lived in the unit and this same individual claimed that he did not know the tenant. The landlord testified that the neighbours have reported to her that the tenant does not live in the unit.

The landlord seeks to end the tenancy on the basis that the tenant does not live in the rental unit, which is contrary to the sales agreement which forms the basis of the verbal tenancy agreement.

Tenant

In reply, the tenant testified that during his time as owner of the property he did not live in the unit, instead he rented it out. The tenant explained that at the time of the sale, in July 2016, his tenants moved out and he moved in. The tenant contends that he maintains a part time residence at the unit staying approximately twice a week and the remainder days at his alternate address in Vancouver. The tenant denies subletting the unit.

Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent.

The onus is on the landlord to prove the reasons listed on the 1 Month Notice took place by the tenant or person permitted on the property by the tenant.

When one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not meet the burden and the claim fails.

In this case the landlord testified that the tenant does not live in the rental unit and has sublet the unit without written permission. The landlord has provided insufficient evidence to establish the tenant has assigned or sublet the rental unit and for this reason I find the landlord has failed to prove her burden to end the tenancy on this ground. Consequently, the tenant's application to cancel the 1 Month Notice is upheld.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenant's application to cancel the 1 Month Notice is upheld. The tenancy will continue until it is ended in accordance with the *Act*.

I issue a monetary order in the tenant's favour in the amount of \$100.00 against the landlord.

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: March 13, 2017

Residential Tenancy Branch