Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF, OPC, MNDC, FF

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 August 22, 2017
b. An order that the landlord comply with the Act, regulations and/or tenancy agreement
c. 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 for cause
b. A monetary order in the sum of $5210
c. 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. The hearing was initially set for September 20, 2017. However, there was not sufficient time to complete the hearing and it was adjourned to December 11, 2017.

Both parties were given a full opportunity to present evidence and make submissions. 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.

Both parties submitted a large number of documents. Much of the material presented was not relevant and was not referred to in the oral hearing and therefore will not be considered in my decision. .

The Notice to End Tenancy is dated August 22, 2017 and sets the end of tenancy for August 22, 2017. However, this document was served on the Tenant on July 24, 2017 by posting. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by the Tenants was served on the landlord by mailing, by registered mail to where the landlord resides on August 9, 2017. I find that the Application for Dispute

Resolution filed by landlord was served on the Tenant by mailing, by registered mail to where the Tenant resides on August 11, 2017.

Issue(s) to be Decided:
The issues to be decided are as follows:

a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated August 22, 2017?
b. Whether the tenant is entitled to an order that the landlord comply with the Act, regulation and/or the tenancy agreement?
c. Whether the tenant is entitled to recover the cost of the filing fee?
d. Whether the landlord is entitled to an Order for Possession?
e. Whether the landlord is entitled to A Monetary Order and if so how much?
f. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:
The rental unit has 3 bedrooms. One of the landlord's lives in the basement. The Craigslist advertisement for the rental unit that was published in 2015 indicates the rent was $1950/month based on 3 person occupancy + utilities:" The tenant disputes this evidence stating the landlord had the ability to change the advertisement after the fact. The tenant failed to provide a copy of the advertisement that she responded to. I accept the evidence of the landlord that the rental unit was advertised as set out above.

On July 7, 2015 the parties entered into a written tenancy agreement that provided that the tenancy would start on August 1, 2015 continue for one year and would become month to month after that. It provided that the rent was $1950 per month payable in advance on the first day of each month. The Tenant paid a security deposit of $975 on July 7, 2017. The tenancy agreement is silent as to the number of occupants and does not contain a provision that the landlord can charge extra for additional occupants. The tenancy agreement contained a clause that provided the tenant could assign or sublet with the written consent of the landlord and that the landlord must not unreasonably withhold their consent.

The parties meet on September 11, 2015 and the notes from the meeting were recorded. Both landlords were present. The tenant and two other roommates were also present. The notes set out four pages of rules and what needed to be repaired.

The landlord provided evidence that the parties agreed that the maximum number of occupants in the rental unit would be three. He testified there was an oral agreement to

this effect. The tenant disputes such an agreement. She testified there was no discussion as to the number of occupants and no agreement.

The tenant's roommates changed over time. The tenant advised the landlord of the replacement of one roommate with another. The communication between the parties was relaxed and there was not formal vetting process.

On December 15, 2017 the tenant e-mailed the landlord advising that one of her roommates was moving out and would be replaced by another roommate. The tenant gave the name of the new roommates, where he works and offered to provide the landlord with his references should the landlord wish.

On January 1, 2017 the landlord e-mailed the tenant wishing her a Happy New Year, thanking her for the notification of the change of roommates and including the following: "Any arrangements will be between yourself and the new occupant. You, as our tenant, remain responsible for the number of occupants you have (max. 2, J and C)." The tenant did not respond to this e-mail.

On June 19, 2017 the landlord e-mailed the tenant specifically asking how many occupants are confirmed living within the rental unit due to increased traffic activity noticed by the landlord who was living downstairs. The Tenant did not reply.

On July 1, 2017 the landlord sent a second e-mail to the Tenant asking how many occupants are confirmed living with the rental unit.

The tenant responded by e-mail on July 4, 2017 stating there are now 4 tenants including herself as of July 1, 2017. The e-mail continues to identify who has moved out and who has moved in. It also states that O has moved in "who is likely with us temporarily."

On July 5, 2017 the landlord responded by e-mail stating the following:

> "An additional person living within the rental suite has never been brought to our attention. Your arrangement was only for two "roommates" not three.
>
> The rental unit provides for only for three total bedrooms. There are no provisions for a fourth bedroom nor was ever intended or approved. Any modification or changes to allow for a fourth occupant were never approved.

This is a non approved change to the current arrangements. We will need to be appropriately compensated for this unapproved action(s) initiated by you.

There are major implications to this regarding liability, insurance, security compensation, etc.

On July 9, 2017 the tenant responded by e-mail stating she had rearranged the furniture to create a temporary visual partition and used a framed piece of drywall to create a fourth bedroom. The rental unit was not damaged in anyway. She further requested what the landlord was expecting with regard to additional compensation. The e-mail also states “I did consult our rental agreement before proceeding with any changes, and as per the copy I have there exists no stipulation as to the number of tenants permitted.”

The landlord produced a letter from his insurance broker dated July 14, 2017 that included the following:

- The landlord’s home insurance policy is currently in breach of the insurance conditions outlined by the insurer, as there is more than the allowed number of unrelated individuals residing at this location.
- Because of the breach his insurer would no longer insure this risk. The insurer will only provide 30 days of coverage at this time before termination takes effect. Insurance companies refer to this as a situation as a rooming house and it is unacceptable to the insurer.
- If you continue to have more than three unrelated individuals occupying the suite we will have to remark your risk to other insurers most likely in the specialty market where you will be facing higher premiums, higher deductibles, less comprehensive coverage and more requirements as laid out in those markets.
- He strongly advised the landlord to reduce the number of unrelated tenants in the rental unit which would result in a reduction of insurance premiums but also exposure to risks and result in the eligibility for more comprehensive homeowner coverage.

The landlord testified his present premiums for his insurance assuming there are no more than 3 unrelated tenants is $1400 to $1600 per annum. He produced additional evidence from his insurance broker as follows:

- He produced quotation from possible insurers indicating his premiums would increase to $3695 or $2929 per annum depending on the company used.

- His coverage would be significantly less. Presently he has replacement cost coverage. However, if he was forced to go to the specialty market the coverage would be reduced to Actual Cash Valuation.
- The insurance broker used the following example. The replacement cost valuation on a 2400 square foot home amount to around $480,000. However, the Actual Cash Valuation if the house was entirely destroyed would amount to a depreciated value of $50,000 or less for the same insured loss.

The landlord testified that he has made arrangement with his insurer that he is still covered on a temporary basis to the middle of January 2018 because of his good record and good relationship with his insurer.

The parties produced documentation of exchange of e-mails etc. discussing ways in which the dispute could be settled. I determined that this evidence is not helpful but is also privileged as it relates to settlement discussions.

The tenant made the following submissions:

- The maximum number of individuals that could live in the rental unit is not set out in the tenancy agreement. Further, at no point in the conversation was this discussed between the landlord and the tenant.
- This is not at assignment or a sublet as she lived in the rental unit at all times. The additional occupants were roommates only.
- She attempted to negotiate with the landlord in good faith but the landed failed to engage in settlement conversations with her.
- The additional bedroom that she made was temporary only. It involved the use of book cases etc. to partition a room. She used a framed piece of drywall for part of it but did not damage the rental unit in any way.
- The landlord’s process when new occupants were brought in was lax and he left it up to her.
- She is not responsible for the landlord’s insurance.
- The landlord is retroactively trying to re-write the tenancy agreement.
- She disputes that there is an unreasonable number of people
- She referred to a previous arbitration case where the arbitrator in that case rejected the landlord’s submission that he could end the tenancy because he could no longer get insurance.

The one month Notice to End Tenancy sets out the following grounds:

- Tenant has allowed an unreasonable number of occupants in the unit/site

- Tenant or a person permitted on the property by the tenant has:
    - 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

Analysis:
After carefully considering all of the evidence I determined the landlord has established sufficient cause to end the tenancy on the basis that the tenant or person permitted on the property by the tenant has put the landlord's property at significant risk for the following reasons:

I do not accept the submission of the tenant that the landlord cannot end the tenancy because the tenancy agreement is silent as to the number of occupants in the rental unit. The landlord may have grounds to end the tenancy in certain situations if the tenant has breached a material term of the tenancy. However, a breach of the tenancy agreement is not the only basis for ending the tenancy. The landlord may have grounds to end the tenancy on the basis that the tenant has breached a ground set out in the Residential Tenancy Act. A review of section 47 indicates there are many grounds which do not involve a breach of the tenancy agreement.

I am satisfied that prior to July 1, 2017 that both parties were conducted themselves on the basis that the number of occupants in the rental unit would be the Tenant and two additional occupants. This is evidence from the Craigslist advertisement, the first meeting between the parties and subsequent replacement of roommates. This is consistent with a 3 bedroom rental unit.

I determined the landlords never agreed that the tenant could have more than 2 roommates plus herself. The January 1, 2017 e-mail confirms this understanding. The tenant never responded to the e-mail with a different understanding.

I determined that the tenant's unilateral decision to include an additional roommate has put the landlord's property at significant risk. I accept the evidence of the landlords that the presence of more than 3 unrelated occupants would result in a significant increase in premiums. More importantly, it would result in a major reduction in the coverage for the landlord as the only insurance available for this type of risk is Actual Value Cost rather than Replacement Cost. Based on the evidence presented the differences in the

Valuation between Replacement Cost and Actual Cash Value could result in a loss to the landlords of over $350,000 if there was a total loss to the house.

The tenant failed to provide sufficient evidence to dispute the landlord's evidence as to the costs of the insurance or the limitations in the type of coverage.

I determined the tenant made changes to the rental unit in order to accommodate the third roommate without the approval of the landlord and failed to advise the landlord of those changes prior to bringing in the third occupant.

The Tenant relies on a decision of an arbitrator in a previous hearing. I accept the submission of the Tenant that this case supports her position. However, I am not bound by this decision. Further section 64(2) of the Act provides as follows:

> "64(2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part."

Further, the decision did not sufficiently consider whether the landlord had grounds to end the tenancy for a breach of one of the provisions of the Residential Tenancy Act which is separate and distinct from a breach of the tenancy agreement.

As I determined there was sufficient grounds to end the tenancy based on the grounds that the Tenant or person permitted the property has put the landlord's property at significant risk, I determined that it is not necessary to consider the other grounds set out in the Notice to End Tenancy.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end. I further order that the application of the tenant for the cost of the filing fee be dismissed.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order of Possession. As a result I granted the landlord an Order for Possession. Normally, the effective date of the Order of Possession in this situation would be at the end of December. However, I recognize that the parties will not be receiving this decision and

order until the end of December and it would be very difficult for the tenant to find alternative accommodation. As a result I set the effective date of the Order of Possession for January 31, 2018.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Landlord's Application - Order of Possession:
For the reasons set out above I granted an Order of Possession.

Analysis - Monetary Order and Cost of Filing fee:
With regard to each of the landlords' monetary claims I find as follows:

a. I dismissed the landlords' claim of $4456.38 for additional rent and utilities for an unauthorized occupant equal to per person rent based on previous and current calculations for the period July to December 2017. The landlords failed to prove this claim and failed to prove a loss. The tenancy agreement does not have a clause which would permit a landlord to charge an additional sum for an additional occupant. The landlord failed to prove this claim.
b. I dismissed the landlord's claim of $754 for an increased annual insurance premium as the landlords failed to provide sufficient evidence to prove this claim.

As the landlords have been successful with their application I determined they are entitled to recover the cost of the filing fee from the Tenant. I ordered that the Tenant pay to the Landlord the sum of $100 for the cost of the filing fee such sum may be deducted from the security deposit.

This decision is final and binding on the parties.

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 21, 2017

Residential Tenancy Branch