Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR ERP MT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 66; cancellation of the landlord's 10 Day Notice pursuant to section 46; and an order that the landlord make repairs (or emergency repairs) to the rental unit pursuant to section 33.

Representatives for both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant confirmed receipt of the landlord's 10 Day Notice in person on March 9, 2018 and the landlord confirmed receipt of the tenant's application to dispute that notice on March 22, 2018. The landlord submitted evidence for this hearing in digital format and documentary evidence.

Preliminary Issue: more time to make application, nature of tenancy

The applicant (LW) applied for more time to make the application. Pursuant to section 46 of the Act, a tenant has 5 days after receiving a 10 Day Notice to End Tenancy to apply and dispute the 10 Day Notice. If the tenant fails to dispute the notice within 5 days, the tenant is presumed to have accepted the Notice to End Tenancy. In this case, the tenant confirmed receipt of the landlord's 10 Day Notice on March 9, 2018 and made an application on March 21, 2018 (12 days after receiving the notice). Section 66 of the Act provides that an arbitrator **may extend a time limit in only exceptional circumstances.** The tenant has indicated that she was unable to reach Tenant GW and therefore was uncertain of what steps to take; this does not provide exceptional circumstances to justify extending the 5-day time limit for the tenant to apply. I find that LW, GW and RR all failed to make an application as described above in accordance with the requirements of the Act. Further, I find that the reasons provided (lack of

information as to what steps to take or other confusion about the process) are insufficient to be considered exceptional circumstances. They are circumstances that could have been addressed by reviewing the timeline information on the 10 Day Notice itself and/or seeking advice regarding the process). Therefore, I find that LW is not entitled to more time to make her application. Her application will be dismissed on that basis. For the benefit of the parties, I provide information below regarding the landlord's fulfilment of section 52 of the Act (providing a 10 Day Notice that is accurate in form and contact) as well as the obligation of each party (GW, RR, LW) to the tenancy.

With respect to the type of tenancy that existed between the parties who attended this hearing, based on the testimony provided, GW is the tenant – he rented the unit from the landlord. As of the date of this hearing, LW and RR still reside in the rental unit. Only GW is listed on the tenancy agreement submitted as evidence for this hearing. He testified that he did not pay rent in March or April 2018 because neither RR nor LW provided him with the funds to do so.

A portion of the Residential Tenancy Policy Guideline regarding subletting (No.19) is reproduced below,

> *When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (… a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant … and becomes the "landlord" of the sub-tenant. … there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement.*

A sublease is intended to be temporary and for a shorter period of time than the tenancy itself. This was not the intention of the parties in this tenancy. Further, the policy guideline reads that "If the original tenant transfers their rights to a subtenant under a sublease agreement and vacates the rental unit, a landlord/tenant relationship is created and the provisions of the Act apply to the parties." This would apply in a situation where the landlord was asked and granted permission for a change in tenants, pursuant to section 34 of the Act. The evidence of both parties is that the landlord was not asked and did not grant permission for a change in tenants. Further, GW testified that he did not intend to return to the rental unit in the future but had, in fact moved away.

The Policy Guideline regarding co-tenants (No.14) is reproduced in part below:

> … A tenant is the person who has signed a tenancy agreement to rent residential premises. … Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord. … If the landlord and tenant sign a written agreement to end the lease agreement, or if a new tenant moves in and a new tenancy agreement is signed, the first lease agreement is no longer in effect. **Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended**. [**emphasis added**] …If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement …

In the absence of clear evidence of another type of tenancy arrangement, when there are more than one tenant, there is a presumption in law of a joint tenancy. In the circumstances of this tenancy, without evidence of an approved sublet, assignment or tenancy in common, and with the continuation of rental payments by GW to the landlord, I find that this is a joint tenancy.

Background and Evidence

The parties agreed that this tenancy began between the landlord and GW in August 2013. He and his daughter resided in the rental unit together. The daughter moved out in November 2017 and, in February 2018, GW added RR (girlfriend) as an occupant in the unit. GW paid rent to the landlord by e-transfer each month. At the end of May 2018, the tenant advised the landlord that he would live the majority of the time in Victoria and that RR would remain in the rental unit. The tenant (GW) testified that he continued to e-transfer the rent to the landlord each month. GW testified that he continued to have possessions in the rental unit and that that he would stay in the rental unit when not in Victoria.

The landlord issued a 10 Day Notice for Unpaid rent on March 9, 2018 showing a rental amount of $2350.00 as unpaid. The 10 Day Notice was issued to GW. GW confirmed

that he did not pay rent in March or in April 2018. GW indicated that he had not received money from RR or LW and therefore did not pay any monies to the landlord for rent: LW indicated that a repair paid for by the tenants as well as other issues with the rental unit itself were the basis for LW's failure to pay rent: LW did not pay rent because she believed that she was owed for harassment by the landlord, the landlord's overreach in entering the rental unit and the cost of repairing a dishwasher. LW did not submit a receipt for the repair of a dishwasher. RR provided minimal testimony during the course of the hearing: she testified that the dishwasher repair cost $550.00.

The landlord testified that, as of the date of this hearing, the tenant(s) owe $5550.00 in unpaid rent. The landlord testified that, after the issuance of the 10 Day Notice on March 9, 2018, the tenant(s) did not pay any further rent.

Analysis

During the course of the hearing, LW indicated that a repair paid for by the tenants as well as other issues with the rental unit itself were the basis for LW's failure to pay rent: LW did not pay rent because she believed that she was owed for harassment by the landlord, the landlord's overreach in entering the rental unit and the cost of repairing a dishwasher. She did not submit documentary evidence (a receipt or other document) to support her testimony.

Section 26 of the Act provides that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." GW indicated that he had not received money from RR or LW and therefore did not pay any monies to the landlord for rent. I find that the tenant(s) failed to pay rent for March, April, May 2018. The landlord did not seek a monetary order with respect to the unpaid rent at this time.

As stated above, respect to the type of tenancy that existed between the parties who attended this hearing, based on the testimony provided, GW is the tenant – he rented the unit from the landlord; LW and RR are co-tenants. I accept the largely undisputed evidence at this hearing that the rent remains unpaid and that LW and RR still reside in the rental unit.

The tenant(s) failed to make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice as required by the Act. I have found that the reasons provided by the parties to this hearing do not meet the standard of "exceptional

circumstances" that would allow for an extension of the standard time limit. I note that this timeline is provided in bold directly on the 10 Day Notice received by the tenant(s).

In accordance with section 46(5) of the *Act*, the tenant's failure to either pay the outstanding rent or to apply to dispute the 10 Day Notice **within five days** led to the end of his tenancy on the effective date of the notice. This required the tenant(s) to vacate the premises by the corrected effective date of March 19, 2018. I accept the submissions of the landlord that all parties should be named in the Order of Possession.

The application for more time is dismissed.
The application to cancel the Notice to End tenancy is dismissed: the tenancy shall end.
The application for repairs and regarding entry to the unit are moot and therefore dismissed as the tenancy shall end.
I find that LW did not properly apply for a monetary order for loss of quiet enjoyment and therefore that portion of the application is dismissed with liberty to reapply.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: June 18, 2018

Residential Tenancy Branch