Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, CNC, CNL, OLC, FFT

Introduction

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

- Cancellation of a One Month Notice to End Tenancy for Unpaid Rent or Utilities (the One Month Notice), pursuant to section 46;
- Cancellation of a Two Month Notice to End Tenancy for Landlord's use (the Two Month Notice), issued pursuant to section 49
- An order requiring the landlord to comply with the *Act,* regulations, and/or tenancy agreement, pursuant to section 62;
- An order to restrict or suspend the landlord's right of entry, pursuant to section 70; and
- Recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord and the tenant, attended. Both parties had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue – Correction of the Landlord's name

At the outset of the hearing the landlord corrected the spelling of her name.

Section 64(3)(c) of the *Act* allows me to amend the application, which I have done to correct the landlord's name.

Preliminary Issue – Service of Documents

The landlord confirmed she received the Notice of Hearing and the evidence (the materials) from the tenant via registered mail. The landlord affirmed she served her evidence to the tenant. The landlord does not know how, when or which evidence documents she served the tenant. The tenant affirmed he did not receive any evidence from the landlord.

Based on the testimony provided, I find the landlord was properly served the materials by the tenant, in accordance with sections 88 and 89 of the Act.

Based on the testimony provided, I find the landlord did not serve her evidence to the tenant in accordance with sections 88 and 89 of the Act. Thus, no documentary evidence from the landlord has been considered.

Preliminary Issue - Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims to cancel the One Month Notice and the Two Month Notice are not sufficiently related to the other claims.

I exercise my discretion to dismiss the tenant's claims with leave to reapply for an order requiring the landlord to comply with the Act, pursuant to section 62 and an order to restrict or suspend the landlord's right of entry, pursuant to section 70.

Leave to reapply is not an extension of any applicable time limit.

Note on the Landlord's conduct during the hearing

During the tenant's testimony the landlord interrupted the tenant three times. I warned her that this behaviour is not acceptable, and when she continued to be disruptive, I muted her, pursuant to Rule of Procedure 6.10.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice and the Two Month Notice?
2. If the tenant's application is dismissed, is the landlord entitled to an Order of Possession?

Background and Evidence

I explained to the attending parties it is their obligation to present their evidence. While I have considered the documentary evidence and the testimony of the parties, not all details of the tenant's submission and arguments are reproduced here. The relevant and important aspects are summarized and my findings are set out below.

The tenant affirmed he entered into the tenancy agreement with landlord GS (the complete name is on the cover page of this decision) in December 2012, when the tenant moved in. The tenant affirmed the monthly rent for the periodic tenancy is $1,950.00. The tenant affirmed that, at the request of GS, he pays the landlord $1,590.46 and the remaining $359.54 he pays to the strata corporation. At the outset of the tenancy GS collected a security deposit of $900.00 and the landlord still holds it in trust. The tenant moved out of the rental unit in 2014 and has been subleasing the rental unit ever since.

A written tenancy agreement between GS and the tenant was submitted into evidence. The tenancy agreement indicates on page 04 that subleasing is allowed with the written consent of the landlord. GS died in June 2019 and since them the landlord has been asking the tenant to end the tenancy.

The landlord said she is receiving $1,590.00 for rent payment from the tenant per month. The landlord does not know if the tenant is paying the strata fee and if she holds the security deposit. The landlord affirmed she is the sole owner of the rental unit since her husband GS died in June 2019.

The tenant affirmed he currently is sub-leasing the rental unit for a fixed term until December 2020. After that date the agreement the tenant has with the current occupants will be a periodic tenancy agreement.

The tenant affirmed he is a “property management and cleaning company, and things like that”.

The tenant affirmed he received the One Month Notice on February 25, 2020, when the Notice was posted to the rental unit’s door. The effective date is March 31, 2020. The Notice is addressed to occupants DO and DR (“the occupants”). The occupants received the Notice on February 25 and immediately contacted the tenant, who submitted this application.

A copy of the One Month Notice was provided. The ground to end the tenancy are:

- Tenant has allowed an unreasonable number of occupants in the unit.
- Tenant has assigned or sublet the rental unit without landlord’s written consent.

Details of the cause were not provided, however, the tenant affirmed he understands the One Month Notice was served because he is subletting the rental unit.

The tenant affirmed he received the Two Month Notice on March 02, 2020, when the Notice was posted to the rental unit’s door. The effective date is May 31, 2020.

A copy of the Two Month Notice was provided. The reason to end tenancy is:

- All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchasers or a close family member intends in good faith to occupy the rental unit.

The landlord affirmed she wants to sell the rental unit, she does not know the current occupants, GS did not tell her the rental unit could be subleased, and GS's signature in the tenancy agreement provided is forged.

The landlord affirmed she served the Two Month Notice because the tenant asked her for more time to end the tenancy.

Analysis

Based on the tenant's undisputed testimony, I find the tenant was served the One Month Notice on February 25, 2020. I find the tenant's application was submitted before the ten-day deadline to dispute the Notice, in accordance with Section 47 (4) of the Act.

As the tenant has not lived in the rental unit since 2014 and has been renting the unit to other occupants, the question arises as to whether this may be a commercial arrangement.

Residential Tenancy Branch Policy Guideline 14 states:

> Sometimes a tenant will rent out a number of rental units or manufactured home sites and re-rent them to different tenants. It has been argued that there is a "commercial tenancy" between the landlord and the "head tenant" and that an Arbitrator has no jurisdiction. This generally occurs in a manufactured home park.
> The courts in BC have indicated that these relationships will usually be governed by the Residential Tenancy Act or Manufactured Home Park Tenancy Act. It is the nature or type of property that is regulated by the legislation. If the type of property comes within the definitions in the legislation and does not fall within any of the exceptions in the legislation, the Residential Tenancy Act or Manufactured Home Park Tenancy Act will govern.

I find the tenancy between the tenant and the landlord is regulated by the Act. Thus, I have jurisdiction in this matter.

The Act and Residential Tenancy Branch Policy Guideline 19 both address subleases and assignments. Section 34 of the Act states:

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

Policy Guideline 19 states:

> Under s. 34 of the Residential Tenancy Act, a tenant must not assign a tenancy agreement unless the landlord consents in writing. A landlord must not unreasonably withhold consent if the tenancy agreement has six months or more remaining in the fixed term.
> […]
> In either a fixed-term or a periodic tenancy, failure to obtain the landlord's written consent prior to the assignment could result in the landlord serving a One Month Notice to End Tenancy (form RTB-33).
> […]
> Assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.
> […]
> Unlike assignment, a sublet is temporary. In order for a sublease to exist, the original tenant must retain an interest in the tenancy. While the sublease can be very similar to the original tenancy agreement, the sublease must be for a shorter period of time than the original fixed-term tenancy agreement – even just one day shorter. The situation with month-to-month (periodic) tenancy agreements is not as clear as the Act does not specifically refer to periodic tenancies, nor does it specifically exclude them. In the case of a periodic tenancy, there would need to be an agreement that the sublet continues on a month-to-month basis, less one day, in order to preserve the original tenant's interest in the tenancy.

The tenant has not provided evidence of an agreement with the occupants which specified the sub-tenancy continues on a month-to-month basis, less one day, in order to preserve his interest in the tenancy. Notwithstanding the absence of a *bona fine* sublease agreement, the tenant has purported to sublease the rental unit and has provided no evidence of obtaining written consent of the landlord which is required by the tenancy agreement itself as well as the Act. I therefore find the landlord is entitled to end the tenancy, pursuant to section 47(1)(i) as provided in one of the grounds on the Notice:

> (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
> […]
> (i)the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting]

I note that the Notice names the occupants of the rental unit and not the tenant. Residential Tenancy Branch Policy Guideline 11 states:

> B. AMENDING A NOTICE TO END TENANCY
> In determining if a person should have known particular information that was omitted from a notice to end tenancy, an arbitrator may consider whether a reasonable person would have known this information in the same circumstances. In determining whether it is reasonable in the circumstances to amend the notice, an arbitrator may look at all of the facts and consider, in particular, if one party would be unfairly prejudiced by amending the notice.

Based on the tenant's testimony, I find the tenant fully understands the details of the cause for the One Month Notice and that the Notice applied to his tenancy. The tenant demonstrated during the hearing he had the information required to dispute the Notice. Thus, I do not find it prejudicial to the tenant to ament the Notice to include the tenant's name and remove the occupant's names.

I find the form and content of the Notice is valid pursuant to section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states a valid ground for ending the tenancy, provides an effective date and is in the approved form.

I find that pursuant to section 55(1)(a) of the Act, the landlord is entitled to an Order of Possession effective March 31, 2020, the effective date of the Notice.

The tenant's application to cancel the Two Month Notice is moot and I order that the Two Month Notice is cancelled.

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the order of possession.

The tenant must bear the cost of his filing fee, as the tenant was not successful.

Conclusion

The tenant's application to cancel the One Month Notice is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective March 31, 2020. Should the tenant 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: May 14, 2020

Residential Tenancy Branch