Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

On September 8, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with A.E. attending as counsel for the Tenant. The Landlord attended the hearing as well. All in attendance, except A.E., provided a solemn affirmation.

A.E. advised that the Landlord was served with the Notice of Hearing package by registered mail on September 18, 2020 and the Landlord acknowledged that this package was received. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

A.E. also advised that the Landlord was served the Tenant's evidence package by registered mail and email on or around October 7, 2020, and the Landlord confirmed that he received this evidence. As service of this evidence complies with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

The Landlord advised that he served his evidence package to the Tenant by posting it to the Tenant's door approximately two weeks ago. The Tenant confirmed that he received this package. As service of this evidence complies with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 1, 2014. Neither party could confirm the specific amount that rent was currently established at, but they agreed that rent is due on the last day of each month. A security deposit of $1,350.00 was also paid. A copy of the tenancy agreement was entered into evidence by each party.

All parties agreed that the Notice was served to a roommate of the Tenant by hand on August 31, 2020. The Landlord served the Notice for the following reasons:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.
- Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk.
- Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit/site or property/park.
- Tenant has assigned or sublet the rental unit/site/property/park without the Landlord's written consent.

The effective end date of the tenancy on the Notice was noted as September 30, 2020.

The Landlord advised that the rental unit was rented to the Tenant as a fully furnished, single-family dwelling. He stated that he never conducted any inspections of the rental unit until he decided to sell the rental unit on 2020. In January 2020, he conducted his first walkthrough of the rental unit and he discovered that the Tenant had made major renovations to basement of the rental unit by erecting extra walls, adding extra rooms,

installing a kitchen, and by installing a washer and dryer. When he asked the Tenant about these modifications and whether they were built to the current BC Building Code, the Tenant advised that his in-laws were living there and that the renovations were built to code. However, he never provided proof of this to the Landlord after the Landlord requested this.

On February 10, 2020, the rental unit was listed for sale and he mentioned to the Tenant that the realtor would contact the Tenant to coordinate showings of the rental unit. However, he stated that the realtor advised him that the Tenant would not cooperate with showings, that the rental unit was a mess and not fit for viewing, and that occupants of the Tenant's would not leave the rental unit during these showings. The Landlord submitted that he texted a picture to the Tenant and asked him what was going on with the extra occupants, and the Tenant advised him that they would be moving out shortly. The Landlord advised that he stopped listing the rental unit for sale.

He stated that the home was designed for only one kitchen and laundry facility, but the Tenant installed a second one of each without the Landlord's consent. He submitted that these modifications do not comply with the local municipal by-laws and his insurance does not cover these changes. He advised that he did not advise the Tenant in writing in January 2020 that these changes were not acceptable, but he verbally told him this. Furthermore, he could "not recall" if he had requested in writing that these issues be rectified.

Regarding the extra occupants, he did not advise the Tenant in writing in February 2020 that these people were not allowed to live there, but he addressed this verbally with the Tenant. It is his belief that the Tenant still has extra occupants living in the rental unit.

He advised that he did not have any proof that the Tenant barred the realtor from entering the rental unit, nor did he know if the realtor gave the proper written notice to enter the rental unit pursuant to the *Act*. He submitted pictures of the condition of the rental unit and the modifications that were made, and he stated that these were not completed by a professional. He has not submitted any evidence from the municipality to confirm that these modifications contravene any local by-laws, nor has he provided any documentation that these changes affect his insurance.

He did mention that he did not receive any extra rent from the Tenant for these extra occupants that were living there.

A.E. cross-examined the Landlord and referred to his written submissions provided as documentary evidence.

The Tenant advised that he asked the Landlord at the start of the tenancy if his wife's extended family could stay in the rental unit and he stated that the Landlord did not oppose this. He submitted that there are five bedrooms in the rental unit, that he has

had roommates come and go over the years, that he has made no attempts to conceal this from the Landlord, and that the Landlord has never raised this as an issue.

He stated that the Landlord would routinely inspect the rental unit approximately every three months, that he walked past the kitchen downstairs, and that he has never told the Tenant that this was not ok.

A.E. added that the Landlord advised the Tenant that the extra occupants would be fine and that if the Landlord were required to pay for any upgrades to the rental unit, he would then increase the rent. However, if the Tenant made any improvements at his own expense, then the rent would not be increased. He submitted that the Landlord never advised the Tenant, prior to service of the Notice, that the occupants were to be removed or that the modifications to the rental unit were to be rectified. As the Landlord was aware of these issues and did nothing to address the issues, there was implied consent from the Landlord that these issues were not a problem. Furthermore, the Tenant did not assign or sublet the rental unit as per Policy Guideline # 19.

The Landlord denied that the Tenant ever asked about any extra occupants in the rental unit. In addition, while he confirmed that he would do inspections of the rental unit approximately every three months, he stated that he would never go inside the rental unit. He advised that the window coverings were always down so he could never see into the rental unit, and the only time he discovered that there were modifications done to the rental unit or that there were extra occupants living there was when he did an inspection in January 2020.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

A Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

> ***47*** *(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*
>
> > *(c) there are an unreasonable number of occupants in a rental unit;*
> >
> > *(d) the tenant or a person permitted on the residential property by the tenant has:*
> >
> > *(iii) put the landlord's property at significant risk;*

> *(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;*
>
> *(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]*;*

Regarding the validity of the reasons indicated on the Notice, I find it important to note that the onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Considered in its totality, I find the Landlord's testimony to be less credible for the following reasons. While the Landlord acknowledged that he went to the rental unit approximately every three months, he claimed not to have entered the rental unit until January 2020. He suggested that he would visit the rental unit every six months to collect rent cheques, but it is not clear to me what he would have been doing the other times he would go onto the property, if not to inspect the rental unit.

Furthermore, if I were to accept that the Landlord did not enter the rental unit until January 2020 and that he only viewed the rental unit from the outside, he has submitted pictures of the outside which he claims demonstrate that the Tenant had made significant changes to the rental unit. Given that these renovations had been made a considerable time ago, had the Landlord never entered the rental unit, I would still find it reasonable that he would have noticed these changes to the exterior of the property as well, which would have alerted him to there being some modifications of the rental unit. If the Landlord truly was not aware of any modifications to the rental unit prior to January 2020 because he never entered to inspect the rental unit, I find it reasonable to conclude that there would have been enough evidence outside the property that would have made him alive to this issue and would have caused him to investigate any possible alterations.

I also find it important to note text messages between the Landlord and the Tenant that mostly seem to occur in or around January and February 2020. In one text, the Landlord writes, "We [sic] done doing the measurements and floor plans. By the way I left you a small gift on your dining table :)". Another text reads, "One important item I need you to do is remove the shelves which are blocking the electrical brake panel downstairs in

kitchen due to safety and insurance liability." Other texts from the Landlord state, "Will be great if no one is downstairs for presentation", "And would you kindly ask your roommates to make the home as clean and tidy as they can?", and "Please tell the guys that the suite must be presentable for open house. Take a look at these pictures. This is unacceptable and not helping with sales. If they do not want to help then they must move out."

When assessing these text messages, it is apparent, in my view, that the Landlord has clearly been in the rental unit and has seen the modifications and the extra occupants. What is lacking is any evidence that corroborates that the Landlord is surprised by any of this. In addition, there is no mention by the Landlord that these were issues that were unacceptable and needed to be dealt with. In fact, the one text message indicates that the Landlord only requests that the occupants move out of the rental unit if they do not tidy up after themselves. This causes me to doubt the Landlord's testimony that he was unaware of any renovations that the Tenant had made to the rental unit or that there were extra occupants living there.

Moreover, in two text messages dated July 28, 2020 and August 12, 2020, the Landlord asks, "How is that list coming along?" in reference to a list of modifications that the Tenant has made to the rental unit. Again, there is no indication that, approximately six months after he allegedly first discovered these changes, he was dissatisfied with them or that he demanded that the Tenant return the rental unit to the original condition. In my view, this appears to be the Landlord's simple request to have the Tenant outline all the changes that he has made to the rental unit.

When reviewing these text communications against the testimony from the parties, I find that the messaging in the texts from the Landlord directly contradicts his testimony during the hearing, and this causes me to question the credibility or truthfulness of his submissions on the whole. As a result, I find that I prefer the Tenant's evidence.

Consequently, I am not satisfied that the Landlord was not aware, since likely the early stages of the tenancy, that the Tenant had conducted renovations to the rental unit or that the Tenant had additional people living in the rental unit. Rather, I am satisfied that the Landlord knew of this and gave consent to allow this to happen. If he truly believed these issues to be a problem, he did nothing over the years to address it with the Tenant. As such, I do not find that he can legitimately end the tenancy for these reasons with this Notice.

Furthermore, the Landlord has noted multiple times that what the Tenant has done in the rental unit is for his "sole benefit" and he stated in a text message dated August 30, 2020 that the "Owner legally has the right to demand the rent you collected for the suite." When reviewed in conjunction with the totality of the other evidence, this appears, in my view, to indicate that the Landlord's only grievance is that he did not also benefit financially from what transpired.

To summarize, with respect to the reason that the Tenant has allowed an unreasonable number of occupants in the rental unit, I do not find that the Landlord has provided sufficient evidence to demonstrate he was not aware of extra occupants in the rental unit, that there were an unreasonable number of occupants, or that he did anything to address this concern with the Tenant. As such, I do not find that the Landlord has sufficiently substantiated the ground for ending the tenancy under this reason on the Notice.

Regarding the reasons that the Tenant or a person permitted on the residential property by the Tenant has put the Landlord's property at significant risk, or that the Tenant or a person permitted on the residential property by the Tenant has caused extraordinary damage to a rental unit or residential property, I am not satisfied that the Landlord was not aware of what was happening inside the rental unit, nor am I satisfied that the Landlord was not ok with any of what happened inside the rental unit at any time. It is evident to me that the Landlord allowed the renovations and the extra occupants.

Furthermore, I do not find that the Landlord has provided sufficient evidence to corroborate that the municipality has deemed that these changes do not comply with the local by-laws, that his insurance will not cover the changes to the rental unit, or how these changes would constitute extraordinary damage. In addition, there has been insufficient evidence submitted by the Landlord that he brought any of these issues up to the Tenant’s attention and demanded that they be corrected. As such, I do not find that the Landlord has sufficiently substantiated the ground for ending the tenancy under these reasons on the Notice.

Finally, with respect to the reason that the Tenant has assigned the tenancy or sublet the rental unit without first obtaining the Landlord's consent, I find it important to note that Policy Guideline # 19 outlines assignment and sublet as follows:

> 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. When either a manufactured home park tenancy or a residential tenancy is assigned, the new tenant takes on the obligations of the original tenancy agreement, and is usually not responsible for actions or failure of the original tenant to act prior to the assignment. It is possible that the original tenant may be liable to the landlord under the original agreement. For example: the assignment to the new tenant was made without the landlord’s consent; or the assignment agreement doesn’t expressly address the assignment of the original tenant’s obligations to the new tenant in order to ensure the original tenant does not remain liable under the original tenancy agreement.
>
> 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 (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. This must be for a period shorter than the term of the original tenant’s tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at

> the end of sublease agreement term, allowing the original tenant to move back into the rental unit. The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant. As discussed in more detail in this document, 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.

When reviewing the outline of assignment or sublet, clearly neither of these descriptions applies to this tenancy. As such, I do not find that the Landlord has sufficiently substantiated the ground for ending the tenancy under this reason on the Notice.

Given the four reasons the Landlord chose on the Notice, based on my assessment of the totality of the evidence before me and the Landlord's corresponding dubious testimony, I am not satisfied that the Landlord has sufficiently substantiated the grounds for ending the tenancy under the reasons on the Notice. Ultimately, I am not satisfied of the validity of the Notice, and as a result, I find that the Notice is of no force and effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the $100.00 filing fee paid for this Application. As such, I permit the Tenant to deduct this amount from a future month's rent.

Conclusion

Based on the above, I hereby Order that the One Month Notice to End Tenancy for Cause of August 31, 2020 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: October 29, 2020

Residential Tenancy Branch