Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT, OLC, PSF, AAT, AS, MNDCT, RP

Introduction

The tenant filed an Application for Dispute Resolution on September 23, 2020 seeking the following orders:

- to cancel a One Month Notice to End Tenancy for Cause (the "One-Month Notice") issued by the landlord on September 22, 2020;
- compensation for the cost of the Application filing fee
- the landlord comply with the legislation and/or the tenancy agreement;
- the landlord provide services or facilities required by the tenancy agreement or law;
- the landlord allow access to the unit for the tenant and/or their guests;
- an allowance to assign or sublet where the landlord's permission has been unreasonably withheld;
- compensation for monetary loss or other money owed;
- repairs made to the unit where yet uncompleted and the tenant contacted the landlord in writing.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on November 27, 2020.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The tenant and the landlord attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

The landlord confirmed receipt of the Notice of Dispute Resolution, which the tenant delivered in person. The tenant likewise confirmed receipt of the landlord's prepared evidence. On this basis, the hearing proceeded.

At the outset, I advised both parties of the immediate issue concerning the One-Month Notice. By Residential Tenancy Rule of Procedure 2.3, I find the other issues above are unrelated and I amend the tenant's Application to exclude these matters. By Rule 6.2 I do not consider the other issues listed above, with the exception of reimbursement of the Application filing fee. The tenant remains at liberty to file a new and separate application to address the other issues.

Background and Evidence

The landlord provided a copy of a tenancy agreement between the parties. This shows the tenancy as starting on January 1, 2012. At that time the tenant paid $980 – with rent increase this became $1,060 by the time of this hearing.

The agreement contains a separate clause about subletting. It states: "the tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this tenancy agreement is for a fixed length of 6 months or more, the landlord must not unreasonably withhold consent."

The landlord issued the One-Month Notice on September 19, 2020. The reason provided on page 2 of the document is: "Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent." On page 3 the landlord listed details:

- Oct 14 2018 we emailed asking who was living in the space we rented to you with a dog you explained you are on a holiday visiting a friend so she is staying while your gone. May 29 2020 person is still there. The space was sublet.
- Sept 3rd email I sent to you and you are helping a friend again as you are helping look after a friend's estate while he is stuck out of town to do with covid. You are helping [third party] as they are in a jam.

A visit to the property from an outside agency on September 3, 2020 prompted the landlord to visit the property. Even though the tenant was out of town, with the landlord's knowledge, the landlord found someone else staying at the property. They emailed to the tenant at that time, asking if they were "re-renting" the rental unit. They

identified to the tenant that the situation was subletting. The tenant replied to state "I have not received any funds to date, so I didn't think to pass on info to you."

On September 18, 2020 the landlord messaged the tenant via email to say: "After this same pattern for the last couple years we have no choice but to ask you to vacate the premises as we did find you were advertising our suite to sublet, the turnaround in people has been too much and we feel this has been so unfair to us given we asked you and you denied it." After a response from the tenant, the landlord summed up their position, as the grounds for issuing the One-Month Notice:

- the tenant is subleasing to parties who have animals, when the tenancy agreement is explicit on both points: they are not allowed;
- "On two separate terms" the tenant stated they were helping a friend short-term
- they found out the tenant was advertising the space for rent – this was for more money than the landlord was asking for rent.

In conjunction with their issuance of the One-Month Notice, the landlord emailed to the tenant to say: "We have tried to explain this to you over and over and you seem to brush it off as if we have no rights."

In October 2020 the landlord accepted rent payment from the third party at the rental unit. They returned this money directly to the third party. In a brief description in their evidence, the landlord described that "third party felt more comfortable paying us the rent directly for [their] own security."

In the hearing, the landlord also provided that they spoke to the third party who was staying at the rental unit. They clarified with that third party that they were paying $1,250 per month. This was after they issued the One-Month Notice to the tenant. This was "just to make sure their instincts were right."

The landlord provided an older email dialogue from 2018 where they inquired to the tenant about how many people were staying in the unit in the tenant's absence. This episode is set out in the details section on the One-Month Notice where the landlord describes further that by May 29, 2020 the third party they inquired about in 2018 was "still there."

The landlord also provided copies of previous communications with the tenant about a different third party in 2018. The landlord inquired on how many people were staying in

the unit while the tenant was out of town. The landlord provided further messages from 2019 where the tenant stated "I am looking to have [third party] stay . . . I hope that will be okay by you guys. . .she would stay next winter escape I do, if she wants."

The landlord provided their communication with the previous 2018 – 2020 third party who stayed at the rental unit. This person provided that "the [unit] was advertised on used Victoria. . .I paid 1250 monthly to [the tenant], yes it was including everything."

In response to the reasons presented by the landlord, the tenant provided a document in their evidence entitled "Evidence to dispute 30day Notice – Written Statement". This is dated October 6, 2020. They provide their submissions therein, among which are the following relevant points:

- they did not have a contract that incorporated verbal agreements;
- before a short period away in the past, they paid four months rent in advance – their "sublet" at that time had prepaid the same – there was no mention of the need for landlord's authority on sublet, nor the possibility of eviction at that time – "This was the second sublet.";
- "The sublet [i.e., third party] was shown a contract that I have never been shown, claimed to be signed by myself."

In the hearing the tenant reiterated that with the current third party the initial arrangement was that they would be staying short term, to make the use of the rental unit. This progressed to the point where they would be staying, eventually turning into a two-month term. They re-stated their submission that they "had no reason to believe they were not allowed to sublet". In the past they were away for four winters, with other "subletters" in the past.

Analysis

The Act section 47 (1)(i) provides that a Landlord may end a tenancy by giving a One Month Notice to end the tenancy if the tenant "purports to . . . sublet the rental unit without first obtaining the landlord's written consent as required by section 34."

The *Act* section 34(1) is explicit: "Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit."

Section 1 of the *Act* gives the definition of "landlord" as:

a) the owner . . . agent or another person who, **on behalf of the landlord**,
(i)permits occupation. . . under a tenancy agreement, or
(ii) exercises powers

c) a person, **other than a tenant occupying the rental unit**, who. . .
(ii) exercises any of the rights of a landlord . . . in relation to the rental unit

In this analysis, I am also informed by Residential Policy Guideline 19: Assignment and Sublet. This is a statement of the policy intent of the legislation, in line with statutory interpretation and the common law. The Guideline assists with the definition of "sublet" as found in the *Act*, noting: ". . . under the Act it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublet agreement."

In this matter, the landlords bear the onus to prove that the reason for ending the tenancy is valid and sufficient.

Based on the evidence and testimony before me, I find as fact there was a sublet agreement in place between the tenant and third party. This supports the landlord issuing the One-Month Notice, and I find it is valid.

I make this finding for the following reasons:

- a previous third party occupying the rental unit was staying there in a sublet arrangement – the landlord provided testimony this person told them directly they answered an ad online, posted by the tenant;
- at no point was there consent from the landlord on any arrangement the tenant made with third parties who occupied the unit;
- the stays by other occupants in the unit were ongoing for extended periods, and became a recurring pattern with a second set of occupants staying in 2020;
- the landlord was not fully informed of the situation in 2018 and 2020 – the tenant is being less-than-truthful about the situation;
- the landlords have the right to engage with whomever is occupying the rental unit on their property – in this case they did so and discovered information about what was happening with the tenancy itself, unbeknownst to them.

I find the evidence shows that the tenant was flouting the tenancy agreement. The evidence shows they were accepting payments from the occupants of the unit in

exchange for that third parties' right to possess the rental unit. This outweighs the tenant's own testimony that the stays were only short-term.

Moreover, there was no evidence that the tenant broached the subject of subletting or sought the landlord's written approval. It is not an unfair expectation that the tenant would do so and, in any event, certainly by 2020 when other sub-tenants arrived and moved into the rental unit.

While not direct testimony from a third party, the landlord's reported discussions with prior occupants carries weight. Conversely, the tenant did not report on or provide evidence of their discussions with the same parties or provide direct statements as evidence from them.

Finally, the tenant applied initially for another issue in this dispute resolution process. That was for an allowance to assign or sublet where the landlord's permission has been unreasonably withheld. I find this relevant to the scenario that presents itself with the reason for the One-Month Notice. This is evidence of the tenant asking for a sublet approval after the fact. My finding is this is proof of a sublet arrangement already in place. This fact carries weight insofar as it *informs* my rationale in examining the legitimacy of the One-Month Notice; however, it is somewhat tangential and does not *carry* this decision entirely on its own.

For these reasons, I dismiss the tenant's Application to cancel the One-Month Notice. The *Act* section 55(1) states that if a tenant applied to dispute a landlord's notice to end tenancy and their Application is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the *Act*.

I find the One-Month Notice issued by the landlord on September 19, 2020 complies with the requirements of form and content as set out in section 52 of the *Act*.

By this provision, I find the landlord is entitled to an Order of Possession.

As the tenant was not successful in this application, I find they are not entitled to recover the $100.00 filing fee paid for this application.

Conclusion

Under section 55(1) and 55(3) of the *Act*, I grant an Order of Possession effective **two days after service of this Order** on the tenant. 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: December 9, 2020

Residential Tenancy Branch