Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding 628589 BC Ltd., Vanmates Consulting
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FFT

Introduction

The Applicant filed an Application for Dispute Resolution on July 7, 2022. They are seeking compensation related to their tenancy ending with a Two-Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice"), and the Application filing fee.

The matter proceeded by hearing on March 28, 2022 pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*"). In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Preliminary Matter – parties' service of evidence

The Applicant named the landlord/owner ("the Respondent 628") of the rental unit property, as well as the party they directly rented from (the "Respondent VC") as Respondents in this matter. In the hearing the Applicant presented that they mailed the Notice of Dispute Resolution Proceeding and evidence (including video) via registered mail to each of these named Respondents. Each party confirmed they received the Notice of Dispute Resolution Proceeding; however, one party stated they did not receive a USB drive containing the Applicant's video evidence.

I find it more likely than not that the Applicant served their evidence as required, including video in a correct format. The Applicant was specific on mailing method used and showed this via receipt from the post office dated July 22, 2022. If relevant and necessary, I give the Applicant's evidence full consideration herein.

The Applicant stated they received a response letter from the Respondent 628 in this Application. The Respondent VC confirmed they sent no documents as evidence. I find this evidence was disclosed by the Respondent 628 in proper fashion, and there is nothing preventing my consideration of it herein.

Issues to be Decided

Is the Applicant entitled to compensation for the Two-Month Notice, pursuant to s. 51 of the *Act*?

Is the Applicant entitled to reimbursement of the filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Applicant provided a copy of the tenancy agreement they had with the Respondent VC. This is titled "Sublease Agreement", dated May 13, 2020. In that document, the Respondent VC is named as the "SubLandlord". The rent payable was $800 per month, with the tenancy starting on June 1, 2020.

In the hearing, the Respondent VC presented that they signed a tenancy agreement with the Respondent 628, and they had a separate agreement to sublet to the Applicant. The Respondent 628 confirmed that their agreement was only with the Respondent VC, and "what they (*i.e.*, the Respondent VC) did with that property we don't know".

In their evidence, the Respondent 628 provided a copy of the tenancy agreement they had with the Respondent VC, named as a business on the agreement. In the hearing, the Respondent 628 stated directly that they had no agreement with the Applicant. The Respondent VC in the hearing reiterated that this was their position: that the Applicant had no relationship with the Respondent 628 here.

The Respondent 628 issued a Two-Month Notice to the Respondent VC, named as the Tenant, on November 25, 2020. This set the final move-out date at January 31, 2021. The Respondent 628, as the Landlord in that agreement, issued this Two-Month Notice because, as indicated on page 2, the sale of the rental unit was imminent, and the purchaser or their close family member intended to occupy the rental unit. A subsequent letter from the Respondent 628 to the Respondent VC appears in the Applicant's evidence; this clarifies that the correct reason for the Two-Month Notice was a person owning voting shares in the family corporation intended to occupy the rental unit.

Following this, the Respondent VC issued a Two-Month Notice to the Applicant, signed on December 12, 2020. This set the end-of-tenancy date at February 28, 2021. The

Applicant gave January 31, 2021 as the end-of-tenancy date in their Application for this hearing.

The Respondent 628 provided a document dated January 15, 2021 wherein the Applicant accepted compensation of two months rent, plus a return of the security deposit, to move out from the property on February 1st by 1:00pm. The Tenant followed this with a note back to the Respondent VC, also signed on January 15, setting out the same terms, and confirming the move-out date of February 1st. The Respondent 628, in providing this document as evidence to the Residential Tenancy Branch, noted for its description: "evidence that [the Applicant] signed an agreement to unconditionally move from the premises by receiving compensation and will not take further action after taking the compensation".

The Applicant presents that they are owed compensation related to the Two-Month Notice they received from the Respondent VC. Specifically, this is on the basis that the landlord did not comply with the *Act* or use the rental unit for the purpose as stated on the Two-Month Notice. They provided video that purportedly shows the rental unit unoccupied as of July 10, 2021, with "no window coverings, no furniture, missing appliances, full mailbox, etc.", meaning "the Landlords did not move in and occupy the home within a reasonable time." A second video shows the rental unit in the same state, still unoccupied, on August 21, 2021.

In the hearing, the Applicant presented that if an original tenant moves out (as in the Respondent VC), the rights transfer to a subtenant (which would be the Applicant in this situation). They submitted that the Respondent VC was in the role of a property manager for the Respondent 628; they are known for having several properties that they manage for landlords, and that is a property management situation, not a sublease.

In the hearing, both Respondents stated their disagreement with this interpretation. The Respondent 628 emphasized that the Applicant willingly signed an agreement to leave by February 1.

The Respondent 628 provided a written statement dated March 17, 2023. They presented the original tenancy agreement they had with the Respondent VC, starting on August 1, 2018, ending on August 1, 2019, and after that the agreement "proceeded on a month-to-month basis." The Respondent VC was the Respondent 628's tenant, paying rent via monthly cheque, and not a property management company.

Analysis

The agreement that was in place was explicit in its title: Sublease Agreement. The Applicant is so named the "Tenant" and the Respondent VC is named as the "SubLandlord". The agreement was for an initial three- month minimum term commencing on June 1, 2020, on a month-to-month basis until May 31, 2021.

The *Act* s. 1 defines "sublease agreement" as a tenancy agreement

(a) under which

(i) the tenancy of a rental unit transfers the tenant's rights under the tenancy agreement to a subtenant for a period shorter than the term of the tenant's tenancy agreement, and

(ii) the subtenant agrees to vacate the rental unit at the end of the sublease agreement, and

(b) that specifies the date on which the tenancy under the sublease agreement ends;

I find there was a sublease agreement in place between the Applicant and the Respondent VC. I find the Respondent VC's tenancy agreement was in its essence longer in term – as stated by the Respondent 628, existing on a month-to-month basis – than the Applicant's fixed agreement set to end on May 31, 2021. There was no contractual relationship between the original landlord (here, the Respondent 628) and the sub-tenant (here, the Applicant).

Given the nature of the agreement, I find that the Applicant did not acquire the full rights provided to tenants under the *Act*. The Applicant was a sub-tenant of the Respondent VC. The Applicant here was not in a position to challenge the end of the tenancy; that could only come from the original tenant, *i.e.*, the Respondent VC.

The Applicant did not show they had a tenancy created with the Respondent 628. This excludes the matter from consideration with the Applicant, with the Respondent 628 not being the "landlord", and the Applicant not being the "tenant". The Landlord served the Two-Month Notice to the Respondent VC, and it would be up to the Respondent VC – as the proper "tenant" – to apply for compensation as per s. 51(2) amounting to twelve months. The Respondent VC did not do so here, and the *Act* does not create a contractual relationship between the Applicant as sub-tenant and the Respondent 628 as landlord. Nor, as the Applicant submits, did the tenancy transfer to them when the Respondent 628 ended the tenancy.

More simply, the *Act* s. 51 only names “tenant” and “landlord” as the primary relationship. The situation here was that of a sublease agreement, and the Applicant was not a “tenant” for the purposes of the *Act*. I find that is explicit in the sublease agreement they had with the Respondent VC, who was not an agent/property manager of the Respondent 628 as the Applicant submitted here, with no evidence showing that and agency existed.

In conclusion, there is no relief available to the Application in this situation; the Applicant as subtenant did not acquire the full rights provided to tenants under the *Act*.

For these reasons, I dismiss the Applicant’s claim for s. 51 compensation. They were not successful in this Application; therefore, I grant no reimbursement of the filing fee.

Conclusion

I dismiss the Applicant’s Application, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: April 10, 2023

Residential Tenancy Branch