



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding VANCOUVER NATIVE HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, OPC

Introduction

This hearing dealt with cross applications pursuant to the *Residential Tenancy Act* (the *Act*) for:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55;

The tenant requested:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Issue(s) to be Decided

Should the One-month Notice be cancelled? If not, is the landlord entitled to an Order of Possession based on the One Month Notice?

Should a specific order be made to compel the landlord to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

AC provided the following testimony. The tenancy began on November 1, 2021 with the current monthly rent of \$594.00 due on the first of each month. On June 5, 2023 the landlord issued a One Month Notice to End Tenancy for Cause, the reason for the notice was that the tenant had sublet the unit without the landlords written permission. AC testified that subletting is prohibited under the tenancy agreement with the tenant. AC testified that the tenant illegally duplicated a fob and keys for the sublettor. AC testified that they only became aware of the issue when the sublettor approached her office as they had a dispute with the tenant who returned to the unit earlier than expected. The landlord submits that this is a material breach, and that the tenancy should end.

PR gave the following testimony. PR testified that a friend; PS, that she had met at college contacted her to see if she could stay at her place for awhile. PR advised PS that she couldn't, but after her friend persisted, she conceded. PR testified that PS rented one bedroom from her, not the entire suite. PR testified that she and her daughter continued to live in the unit throughout the time that PS stayed with her which was from March 28, 2023 to May 18, 2023. PR testified that she left on April 3, 2023 to go to Mexico to see her ailing mother, who passed away while she was there.

JJ submits that PS did not have exclusive and sole use of the unit as is defined by the Act when someone sublets the unit and therefore the reason for the notice does not apply and should be cancelled.

Analysis

When a landlord issues a notice under Section 47 of the Act, they bear the responsibility in providing sufficient evidence to support the issuance of that notice. The landlord submits that the tenant sublet the unit without the landlords' written permission and therefore the tenancy must end. JJ submits that the tenant did not sublet the unit as defined by the Act and that she helped out a friend in need and rented out one of the bedrooms.

Residential Tenancy Policy Guideline 19 addresses the issue before me as follows:

"Sublets as contemplated by the Residential Tenancy Act 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."

After considering all of the testimony, and documentation by both parties, I find that the landlord has failed to provide sufficient evidence that this was indeed a sublet. In the landlord's own documentary evidence, they submitted a photo of a text message between the tenant and PS; the tenant wrote "Just to let you know you were renting one bedroom not the entire apartment for 1000 in DT" and followed that with another text to the PS, "You will keep your room till the end of the month". Based on the above, I find that this was not a sublet but rather an occupant or roommate agreement.

Although the landlord submits that the tenant had an unauthorized person in the unit and that they had "illegally and criminally" duplicated the fob and keys, I agree with JJ's submission that the landlord did not check off the appropriate boxes on the Notice for those reasons and is irrelevant for this proceeding. In conclusion, I find that the landlord has not met the burden of providing sufficient evidence to show that this tenancy should end, accordingly; I cancel the One Month Notice to End Tenancy for Cause dated June 5, 2023, it is of no effect or force.

The tenant and her advocate had numerous opportunities to make arguments and submissions, however; they have not provided sufficient evidence to justify that a specific order be made to have the landlord comply with the Act, regulation or tenancy agreement, accordingly; I dismiss that portion of the tenant's application.

Conclusion

The One Month Notice to End Tenancy for Cause dated June 5, 2023 is cancelled, it is of no effect or force. The tenancy continues.

The landlord's application is dismissed without leave to reapply.

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 12, 2023

Residential Tenancy Branch