



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Easy RentReal Estate Services and
[tenant name suppressed to protect privacy]

DECISION

CNC

Dispute Codes

Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47.

Both parties were represented by their respective agents at the hearing and they were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each testified they were in receipt of the respective materials. Based on the testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This fixed-term tenancy began January 30, 2020 and is scheduled to end January 31, 2021. The applicants are the tenant and other occupant listed on the written tenancy agreement. The named respondent is a property management company that is listed as the agent for the personal landlord on the tenancy agreement. Monthly rent is

\$3,100.00 payable on the first of each month. The rental unit is a suite in a multi-unit strata building.

The landlord submits that they have been informed by an occupant of the rental unit, staff of the rental building and other witnesses that there are multiple occupants not listed on the tenancy agreement residing in the rental unit. The landlord testified that during routine inspection of the rental unit they have observed evidence of multiple occupants including sub-division of the rental unit and personal items clearly belonging to multiple different individuals. The landlord further submits that the Form K-Notice of Tenant's Responsibilities submitted to the strata corporation lists, and is signed by, parties who are not the tenants identified on the tenancy agreement.

The landlord issued a 1 Month Notice to End Tenancy for Cause dated August 25, 2020. The reasons provided on the notice for the tenancy to end are:

Tenant has allowed an unreasonable number of occupants in the unit/site

Tenant or a person permitted on the property by the tenant has:

- *put the landlord's property at significant risk.*

Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The tenants filed their application to dispute the notice on September 2, 2020. The tenants dispute that they have sublet the rental unit or allowed unreasonable number of occupants. The tenants submit that the rental unit is solely occupied by the two named tenants on the tenancy agreement with the named tenant NB having other residences outside of the city and only using the rental unit part of the time. The tenant's agent testified that the Form K submitted into evidence was filled out in error. The tenant's agent submits that the form was completed by the tenant NB's "cousin" and is in regards to an unrelated unit elsewhere. The tenant's agent testified that NB is employed by a "real estate company" but disputed that they are in the business of entering into multiple tenancy agreements in the city and subsequently subleasing those rental units to foreign students or other vulnerable peoples.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice.

Based on the totality of the evidence I find that the landlord has met their evidentiary onus to establish that there is a basis for this tenancy to end. I find that there is preponderance of evidence to support the landlord's position that the tenants have sublet the rental unit without the landlord's permission and have allowed an unreasonable number of occupants to reside in the suite. Based on the testimony and photographs of the suite I find that it is more likely than not that the rental unit is occupied by multiple different individuals with their own personal items. I find the written reports from the staff of the building that they have been notified by individuals not listed on the tenancy agreement that they are renting the suite from unknown parties to be reasonable evidence of the suite being subleased. I find their evidence by way of documentary reports from staff of the building, testimony of the landlord's agents and photographs of the condition of the suite to be sufficient to establish that the rental unit is occupied by multiple individuals who are not named on the tenancy agreement.

I do not find the testimony of the tenant's agent to be persuasive or believable. Their explanation of the circumstances surrounding the landlord's observations have no air of reality. I find the tenant's submission that they are not subleasing the rental unit and any documentary evidence to support that conclusion are simply erroneously completed forms pertaining to a separate tenancy to strain credulity. Their lengthy testimony regarding previous tenancies is irrelevant to the matter at hand and not at all supported in the materials.

I find that the landlord has provided sufficient evidence to demonstrate that there is cause for issuing the 1 Month Notice and accordingly dismiss the tenants' application.

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice clearly provides the reasons for ending the tenancy which I have found to have been established on a balance of probabilities.

Accordingly, I issue an Order of Possession in the landlord's favour. As the effective date of the Notice has passed, I issue an order enforceable 2 days after service.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises 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: October 16, 2020

Residential Tenancy Branch