Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING AUTHORITY
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

CNC, MNDC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause .Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Analysis: Deadline For Filing to Dispute Notice

The landlord pointed out that the tenant had not filed to dispute the One Month Notice to End Tenancy for Cause within the 10-day time limit specified under the Act.

The landlord testified that the One Month Notice to End Tenancy was served in person to the tenant on June 4, 2014. The tenant's application to dispute this Notice was signed by the tenant and processed by Residential Tenancy Branch on June 16, 2014.

Section 47 (1) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has breached a material term without correcting the breach.

Once the One-Month Notice has been served, section 47(4) of the Act provides that a tenant may dispute the notice by making an application for dispute resolution within 10 days after the date the tenant receives the notice. In this instance the ten-day period

would have expired on or before June 14, 2014. I find that the tenant made application to dispute the notice on June 16, 2014, and this is 12 days after receiving the Notice.

Section 66 (1) of the Act gives an arbitrator the authority to extend some time limits established by the Act in exceptional circumstances.

However, arbitrator's authority is limited. The Act specifically states in section 66(3) that the arbitrator has no authority to extend the time limit for making an application to dispute any Notice to end a tenancy beyond the effective date of the notice.

In this instance the effective date of the One-Month Notice is shown as July 31, 2014. I find that the tenant's application, made on June 16, 2014, transpired before the July 31, 2014 effective date of the Notice.

Given the above, I find that I do have statutory authority to extend the date to allow the tenant to file to dispute the notice, if warranted under the circumstances.

In the case before me, I find that the 10-day deadline would have expired on Saturday June 14, 2014. However, the Residential Tenancy Branch offices are closed on the weekend, encompassing Saturday June 14 and the following day, Sunday, June 15, 2014. I find that the RTB office reopened on Monday June 16, 2014, at which time the tenant filed the application to dispute the Notice. Accordingly, I find that the tenant should be granted an extension of two days to dispute the notice.

Issue(s) to be Decided

Should the One-Month Notice to End Tenancy be cancelled?

Background and Evidence

The tenancy began in 2006. The tenant had submitted into evidence a copy of the One-Month Notice to End Tenancy for Cause, dated June 4, 2014, showing an effective date of July 31, 2014. .

The landlord's evidence indicated that the tenant failed to comply with terms contained in the tenancy agreement prohibiting parking of vehicles that are not in operable condition, not insured and those without vehicle plates. The agreement states that these types of vehicles cannot be parked, unless the tenant first makes a written request for permission for temporary storage and obtains the landlord's consent. According to the landlord, this tenant neglected to follow this protocol.

The landlord categorized the above terms in the tenancy agreement as "*material terms*" that were breached. The landlord's position is that the tenant breached the material term and failed to correct the situation within a reasonable amount of time. The landlord

acknowledged that the tenant has since removed the offending vehicle, but the landlord pointed out that this was not done until after the hearing was scheduled.

The landlord still feels that the One Month Notice to End Tenancy for Cause should not be cancelled.

Submitted into evidence was a copy of the 11-page tenancy agreement containing a section with terms respecting parking.

The tenant testified that the issue has been resolved as the car was permanently removed. The tenant is requesting that the landlord's One Month Notice to End Tenancy for Cause be cancelled.

Analysis

I accept that the tenancy agreement contains terms prohibiting parking of non-operational, uninsured vehicles. In regard to whether or not the particular provisions are "*material terms*", I find that terms dealing with parking in the agreement are not distinguished, nor highlighted in any way that would indicate the parties had considered these terms to be material to the tenancy.

I find that the question of whether or not a term is "material" is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. A *material term* is a term that the parties both agree is so important that the most trivial breach of that particular term will give the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the arbitrator must focus upon the importance of the term in the overall scheme of the tenancy agreement. It is possible that the same term may be material in one agreement and not material in another.

Where a landlord gives written notice ending a tenancy agreement on the basis that the tenant allegedly breached a material term of the tenancy agreement, the party alleging the breach bears the burden of proof.

I find that the tenant did breach a term of the tenancy agreement by having the vehicle in question parked on the premises. However, I do not accept that this was a breach of *material term* affecting the continuation of the tenancy.

In fact, I find that this tenancy agreement actually includes a remedy that the landlord had the option of implementing. I find that paragraph 16(3)(c) contains a term in which the parties have agreed to the following:

> *" the tenant understands and agrees that any motor vehicle parked in contravention of Section 16(c) or in any unauthorized location may be towed away at the owner's expense."*

Given the above, I find that the tenant's violation of the term against parking of inoperable vehicles is not sufficient cause to end this tenancy under section 47 of the Act. Accordingly, I find that the One-Month Notice must be cancelled.

In cancelling the Notice, I caution the tenant that they are required to comply with tenancy terms, material terms or otherwise, under the Act and failure to do so may affect the continuation of the tenancy.

Based on the above, I hereby order that the One-Month Notice to End Tenancy dated June 4, 2014 be cancelled and of no force nor effect.

I further grant the tenant reimbursement of the $50.00 cost of this application and order that the tenant may reduce the next monthly rent payment to the landlord by $50.00.

Conclusion

The tenant is successful in the application. The One-Month Notice to End Tenancy for Cause is cancelled.

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: August 12, 2014

Residential Tenancy Branch