Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing dealt with the tenant's application to cancel a *1 Month Notice to End Tenancy for Cause* and return of the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

I determined that the tenants are still residing at the rental unit and wish to continue their tenancy. Accordingly, I found the tenant's request for return of the security deposit to be pre-mature. The tenant was of the position it should be refunded because the landlord did not prepare a move-in inspection report. Although failure to prepare a move-in inspection report extinguishes the landlord's right to make a claim against the security deposit for damage to the rental unit, the landlord retains the right to make claims against a security deposit for other amounts owed by the tenants such as rent and utilities. Therefore, I did not consider this requires further and the parties were informed that the security deposit shall remain in trust for the tenants to be administered in accordance with the Act.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

The tenancy started September 1, 2007 and is currently in a month to month status. Rent is payable on the first day of every month. Pursuant to a previous dispute resolution decision issued on February 2, 2016 the tenants' monthly rent obligation is

$1,510.00 (the file number for that decision is provided on the cover page of this decision).

On February 29, 2016 the landlord posted a *1 Month Notice to End Tenancy for Cause* (the 1 Month Notice) on the door of the rental unit. The 1 Month Notice has a stated effective date of April 1, 2016 and indicates two reasons for ending the tenancy:

- Tenant has not done required repairs of damage to the unit; and,
- Breach of a material term that was not corrected within a reasonable time after written notice to do so.

With respect to damage to the property, the landlord explained that this reason pertained to the tenants not cleaning the carpeting for over two years and that the carpeting was very dirty. The tenant had the carpeting cleaned March 9, 2016 but the landlord pointed out that this was after he issued the 1 Month Notice. The tenant was of the position that a dirty carpet is not damage. Further, the tenant was of the position that the carpeting is very old and worn and approximately 25 – 30 years old. The lack of carpet cleaning was also one of the issues identified as being a breach of a material term of the tenancy agreement as provide below.

The landlord had provided a written breach letter to the tenants dated February 18, 2016 (herein referred to as the breach letter). There are three breaches identified by the landlord in the breach letter. The landlord identified the breaches and the action required of the tenants to correct the breaches as follows:

1. Breach of term #10 of the tenancy agreement which provides “Tenant agrees to allow the Landlord to inspect the suite on the first or second day of each month.” The landlord alleges that the tenant has not allowed the Landlord to make inspections and that the tenants are required to “Allowed the Landlord to make inspection as on Rental Agreement” to correct the breach.
2. Breach of term #11 of the tenancy agreement which provides “Tenant agrees to repair any damages made to the property within 10 days after the Landlord’s Inspection.” The landlord alleges that the tenants have not cleaned the carpeting and that the tenants must clean the carpet on or before February 29, 2016 to correct the breach.
3. Breach of term #14 of the tenancy agreement which provides “Tenant agrees not to park any unlicensed vehicle on the property.” The landlord alleges that the tenants have parked two unlicensed vehicles parked on the property and the tenants are required to “Moved away those 2 unlicensed vehicles off the property on or before February 29, 2016” to correct the breach.

With respect to the first breach identified above, the landlord submitted that he went to the rental unit on February 29, 2016 and requested consent to enter and the tenant declined to give consent. The landlord then posted a 24 hour written notice of entry on the door of the rental unit but when he returned to the property on March 1, 2016 the tenant left the 24 hour notice for the landlord to see with a message that the 24 hour notice was not valid. The landlord did not attempt to enter the unit without the tenant's agreement to do so.

The tenant was of the position the 24 hour notice was invalid because of the date and time of posting the 24 hour notice was not provided on the notice. The tenant's message to the landlord also indicated that the parties had to reach a mutually agreeable date and time for the inspection.

I was provided a copy of the 24 hour notice. It provides, in part: "Landlord wants to inspect inside of suite you are living on around 5:00 pm on March 1, 2016 or same time when I pick up your March rent cheque." I reviewed the landlord's and tenant's respective rights and obligations with respect to 24 hour notices of entry and the landlord's right to enter upon giving the tenant a valid 24 hour notice.

As for the second breach, as described in the breach letter, the tenancy agreement provides that the tenant must repair damage to the property within 10 days of the Landlord's Inspection. Again, the parties were in dispute as to whether a dirty carpet constitutes damage to the rental unit. However, when asked for the date the landlord inspected the unit the landlord was unable to provide a date. During the hearing the landlord also pointed to term #4 of the tenancy agreement which provides "Tenant agrees to keep the house or suite, inside and out, and the yard clean at all times." The landlord stated that he has been trying to get the tenants to clean the carpeting for two years. The tenant submitted a carpet cleaning receipt to show that the carpets were cleaned on June 25, 2010 and on March 9, 2016. The tenant stated that the carpets are very old and worn, approximately 25 – 30 years old. However, the tenant acknowledged that the landlord has been requesting they clean the carpeting for approximately six months. The tenant explained that his mother had a stroke in early February 2016 which has consumed more of his focus than carpet cleaning. The tenant also alleged that the landlord helped another tenant on the property clean the carpeting in that unit whereas the tenant has had to pay for cleaning his carpets.

With respect to the third breach, the landlord explained that when he returned to the property on February 29, 2016 he observed that the two vehicles in question were still parked on the property and did not have license plates. As such, the landlord

concluded that the vehicles remained unlicensed. The tenant provided insurance documents as evidence to show that the subject vehicles were insured through the Insurance Corporation of British Columbia (ICBC) for pleasure use on February 22, 2016. The tenant acknowledged that he does not have license plates displayed on the vehicles but that does not mean the vehicles are not licensed. I noted that the insurance documents from ICBC provide for license plate numbers and decal numbers for the license plates. The tenant acknowledged that he did not produce a copy of the insurance documents to the landlord prior to February 29, 2016 but explained that he had not been asked to produce such documentation.

The landlord remained of the position that the vehicles should not be parked on the property because the tenant is not paying extra money for parking more than one vehicle on the property and that the tenant should move the vehicles to the laneway behind the property. I noted that the tenancy agreement provides that "parking" is included in rent and there is no maximum number of vehicles specified in the agreement. The tenant pointed out that the issue of parking and paying extra money for parking was raised during the previous dispute resolution proceeding. I determined that the Arbitrator had concluded that the landlord was not to charge the tenant money for parking extra vehicles on the property.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to both reasons indicated on the 1 Month Notice.

Tenant has not done required repairs of damage to the unit/site

With respect to first reason indicated on the 1 Month Notice it is important to note that the landlords seeks to end the tenancy due to damage to the rental unit and not because the tenants failed to maintain reasonable levels of cleanliness. Accordingly, it is not before to determine whether the tenants have maintained a reasonable level of cleanliness under this reason and I must be satisfied that the tenants damaged the rental unit. I accept that it is possible to damage carpeting by excessively soiling it so that it is beyond cleaning. However, upon consideration of everything presented to me, I find I am unpersuaded by the landlord's verbal description of the carpeting in the absence of other evidence insufficient for me to conclude the carpeting was so dirty it

was beyond cleaning and damaged. Also of consideration is that I also heard undisputed testimony that the carpeting is showing signs of significant wear and tear due to its age. Perhaps more compelling in my decision that dirty carpeting does not constitute damage in this case is that the remedy sought by the landlord was to have the carpets cleaned and not repaired. Therefore, I find the landlord failed to satisfy me that the tenants have damaged the carpeting in the rental unit.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so

It is important to note that in order for a term in a tenancy agreement to be enforceable it must not conflict with or violate the Act. Further, section 6 of the Act provides that a term is not sufficiently clear is unenforceable. Accordingly, in order to end the tenancy under this ground I must be satisfied that

- The tenant is in violation of a material term of the tenancy agreement;
- The subject term is an enforceable term;
- The landlord gave the tenant written notice of the breach; and,
- The tenant did not correct the breach within a reasonable amount of time.

Below, I have analyzed each of the three breaches identified by the landlord in the written notice issued on February 18, 2016.

1. Breach of term #10 [Tenant agreed to allow landlord to inspect rental unit on first or second day of each month].

I find that term #10 of the tenancy agreement is not an enforceable term because it is vague as to the date of entry and no time of entry is specified. Further, section 29 of the Act precludes a landlord from seeking consent or giving written notice of entry more than 30 days in advance. Accordingly, I find the landlord cannot rely upon term #10 as a basis to enter the rental unit and must not enter unless the landlord complies with section 29 of the Act. Since term #10 is not an enforceable term I find the landlord cannot end the tenancy due to a breach of this term.

A landlord has a restricted right to enter a rental unit under section 29 of the Act. Section 29 provides, in part, that a landlord may enter upon obtaining the tenant's verbal consent to enter or by giving the tenant a written notice of entry at least 24 hours in advance, but not more than 30 days in advance. A tenant is at liberty to decline to give verbal consent for whatever reason and suggest another time to the landlord if he

so choses. However, if verbal agreement is not reached the landlord may proceed to serve the tenant with a written 24 hour notice of entry and specify a date and time of entry that is between the hours of 8:00 a.m. and 9:00 p.m. Where a landlord gives a valid 24 hour notice of entry the landlord is at liberty to enter the rental unit even if the tenant has not given consent and whether the tenant is home or not. Section 29 of the Act provides for the information that must be included in the 24 hour notice. I note that the tenant had included a copy of section 29 of the Act in his evidence package and the parties are encouraged to familiarize themselves with their respective rights and obligations provided under section 29 of the Act and act accordingly.

I find the 24 hour notice issued by the landlord on February 29, 2016 is not valid. Not because of the reasons expressed by the tenant but because the time of entry was too vague when the landlord indicated he would may enter at the "same time when I pick up your March rent cheque" without any indication as to when that would be. Further, section 90 of the Act provides that where a document is posted to a door or left in a mailbox, the document is deemed to be received three days later. Accordingly, the landlord could not have entered any sooner than March 4, 2016 after taking into account the deeming provision of section 90.

2. Breach of term #11 [Tenant agrees to repair any damages made to the property within 10 days after the landlord's inspection]

As provided previously in this decision, I remain unpersuaded that dirty carpeting constitutes damage. Nevertheless, in order to determine there has been a violation of this term the date of the inspection would have to be known which it was not. Accordingly, I do not consider this reason further without further analyzing whether the term is enforceable or a material term.

For the parties' future reference, a tenant's obligation to repair and maintain the property is as provided under section 32 of the Act which provides:

> (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
>
> (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear

[reproduced as written]

Residential Tenancy Policy Guideline 1 provides that a tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. It is suggested to the tenant that they clean the carpets as necessary to maintain a reasonable standard of cleanliness. The cost of cleaning the carpet is that of the tenant unless an event necessitates carpet cleaning that is not the tenant's responsibility, such as a fire or flood.

3. Breach of term #14

The tenancy agreement provides that the tenants must not park unlicensed vehicles on the property. However, the tenancy agreement does not limit the number of vehicles the tenant may park on the property. Accordingly, I find that licensing all of the vehicles parked on the property would correct a breach of the tenancy agreement and I am of the view that landlord's demand that the tenant remove the vehicles from the property is the landlord's response to being denied the ability to charge extra money for parking in the previous dispute resolution proceeding. Since the tenant licensed the vehicles on February 22, 2016 and before the deadline of February 29, 2016 I find the tenant was no longer in breach of term #14 when the 1 Month Notice was issued. Therefore, I do not end the tenancy for this breach.

While the tenant have chosen to display the license plates and insurance decals on the vehicles, I find it reasonable that the tenant produce proof of licensing to the landlord upon request to avoid future disputes with respect to this matter.

In light of all of the above, I cancel the 1 Month Notice issued on February 29, 2016 with the effect that the tenancy continues at this time.

Since the tenant was successful with this application, I award recovery of the filing fee to the tenant. The filing fee paid was $100.00 and the tenant is authorized to deduct $100.00 from a future month's rent payment to recover this award.

Conclusion

The 1 Month Notice to End Tenancy is cancelled and the tenancy remains in effect.

The tenant is awarded recovery of the filing fee and is authorized to deduct $100.00 from rent payable in a subsequent month to recover this award.

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: April 22, 2016

Residential Tenancy Branch