



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

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 (the "1 Month Notice").

The tenant and the landlord attended the hearing. Each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on February 1, 2016 on a fixed term. Rent in the amount of \$1,495.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$747.50 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged personal receipt of the landlord's 1 Month Notice dated August 16, 2016. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

- tenant has assigned or sublet the rental unit/site without landlord's written consent

Under the details of the cause portion on the 1 Month Notice, the landlord indicated the tenant "has unauthorized person living in the suite and left vacant for longer than 5 days causing my insurance policy to be void."

Landlord

The landlord testified that the primary reason for issuing the 1 Month Notice was her belief that the tenant had either breached a material term of the tenancy agreement by allowing additional occupants to reside in the rental unit or sublet the rental unit without her consent. Early in the tenancy in February of 2016, the landlord had attended the rental unit to make some repairs. At this time the landlord observed women and children's clothing in the rental unit. As the tenancy agreement was drafted for a sole male occupant, and the landlord suspected additional occupants were living there, she took photographs of the clothing. The landlord acknowledged that she did not share the photographs with the tenant or communicate her concerns about the additional occupants to the tenant at this time.

On July 26, 2016 while standing outside the rental unit complex, an occupant of the rental unit complex approached the landlord and advised the landlord that a couple was living in her rental unit. This same date the landlord sent written notice to the tenant that a breach had occurred and the tenant had 10 days to rectify the breach. The landlord testified that the written notice was sent via regular mail to the rental unit where the tenant resides. The landlord has submitted a copy of the written notice.

In the absence of a reply within 10 days from the tenant, the landlord emailed the tenant to schedule an inspection for August 12, 2016. The tenant replied, telling the landlord he would prefer he was present for the inspection as he had a friend staying in the rental unit and did not know the condition of the rental unit. The party's exchanged a number of emails one in which the tenant acknowledged cleaning the dryer duct vents. It is the landlord's position that this work is to be conducted by a contractor as per her insurance policy. The landlord contends that the tenant's action of cleaning the dryer duct vents and the tenant's refusal for an inspection of the rental unit on August 12, 2016 seriously jeopardized the health or safety or lawful right of another occupant or landlord. The landlord has submitted copies of the email exchanges between the landlord and tenant.

Based on email exchanges between the landlord and tenant the landlord interpreted that the tenant had left the rental unit longer than five days causing her insurance policy to be void. The landlord contended that this was grounds to end the tenancy.

Tenant

The tenant denied breaching a material term of the tenancy agreement by allowing additional occupants. The tenant also denied subletting the rental unit. The tenant explained that at the start of his tenancy he was going through a separation that resulted in both parties obtaining new residences. His estranged partner had lost access to laundry therefore the tenant volunteered to do her laundry at his rental unit. The photographs the landlord submitted depict this laundry hung about the rental unit drying. The tenant denied additional occupants lived in the rental unit or that he sublet the rental unit. The tenant agreed he occasionally had guests stay in his absence but always respected the two week clause in his tenancy agreement. The tenant testified that he did not collect rent from these guests and upon his return he resumed living in his rental unit while his guest(s) would return to live in their residence(s). The tenant testified that he did not receive the landlord's written notice of a breached material term.

In relation to the landlord's allegation that he refused entry for an inspection on August 12, 2016, the tenant testified that he expressed to the landlord that he was out of town and his preference was to be present at the inspection. The tenant testified that he did not deny entry. The tenant acknowledged that he cleaned lint from the dryer and dryer vent located on the patio but testified that he did not clean the ducts. The tenant understood that the strata cleaned the actual ducts.

The tenant testified that he is not obligated to notify the landlord when his absence is less than two weeks. The five day clause in relation to the landlord's insurance is not included in the tenancy agreement.

Analysis

Under section 47 of the *Act*, a landlord may end the tenancy if the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, for breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so, or the tenant has assigned or sublet the rental unit/site without landlord's written consent. The onus is on the landlord to prove the reasons listed on the 1 Month Notice took place by the tenant or person permitted on the property by the tenant. The landlord provided evidence in the form of oral testimony, emails and written documents.

The landlord understood the tenant was cleaning the ducts whereas the tenant denies this and testified that he cleaned the vents. The landlord has provided insufficient evidence to substantiate the tenant cleaned the ducts and I therefore find it probable the tenant only cleaned the vents. I find the tenant's action of cleaning the dryer vents is in accordance with section 32 of the *Act* which requires tenants to maintain a reasonable health, cleanliness and sanitary standard throughout the rental unit. Accordingly, I do not find this action constitutes grounds to end the tenancy.

Section 29 of the *Act* establishes that in the absence of the tenant providing permission of entry, the landlord must give written notice that includes the purpose of entry, which must be reasonable and state the date and time of entry. The landlord sent an email stating;

"I was thinking of doing a inspection of the condo this Thursday the 11th or Friday the 12th of August." The time could be from about 12:00-4:00pm. I need to check the dryer duct, and clean it and check the patio, and drain, and dryer duct outside. I can leave you some rent receipts. Thank you."

[reproduced as written]

I find this notice of entry ambiguous. It indicates the landlord is "thinking" of doing an inspection and does not specify whether the possible inspection will take place on the 11th or 12th. For this reason I find the notice was not in accordance with section 29 of the *Act* and therefore find the tenant had no obligation to grant the inspection on either August 11th or August 12, 2016.

Overall I find the landlord has failed to meet her burden in establishing the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord, by cleaning the dryer vents and "refusing" entry.

In order to end a tenancy for breach of a material term the landlord must prove the breach and prove the tenant was provided with written notice of the breach that includes a timeline for the tenant to correct the breach. Under section 88 of the *Act*, the written notice may be sent by regular mail and therefore deemed served five days after its mailing. A tenant can rebut the deemed provision with clear evidence that the document was not received or evidence of the actual date it was received. In this case, the tenant denied receipt of the written notice but provided no clear evidence. Accordingly, I find in accordance with section 88 of the *Act* the tenant was deemed served the written notice of a breach on July 31, 2016 five days after its mailing.

Although I find the tenant was served with the written notice, I find the landlord has provided insufficient evidence to substantiate the tenant breached a material term by

allowing additional occupants to reside in the rental unit or that the tenant sublet the rental unit without the landlord's consent. The landlord suspected additional occupants at the start of tenancy, failed to address this with the tenant and then on the basis of a comment made by a third party who was not present for the hearing, issued a written notice of a breach. The tenant, on the other hand, provided a reasonable explanation for the presence of women's clothing at the start of tenancy and clarification that he had guests stay for durations less than two weeks as per his tenancy agreement. Overall I find the landlord has not met her burden of proof that the tenant breached a material term or sublet the rental unit.

The landlord suggests that a five day absence is a breach of material term that would void her insurance policy and therefore be grounds to end the tenancy. First and foremost the landlord did not include this alleged breach in her written notice sent to the tenant on July 26, 2016 so therefore the tenancy cannot end based on a breach of this material term. Alternatively, even if the landlord had included this in her breach letter, the term which restricts the tenant of absences of more than five days is unconscionable, as defined by section 3 of the *Residential Tenancy Regulation*, oppressive or grossly unfair to one party. Pursuant to section 6 of the *Act*, an unconscionable term of a tenancy agreement is not enforceable.

For the reasons stated above, I uphold the tenant's application to cancel the 1 Month Notice.

Conclusion

The tenant's application to cancel the 1 Month Notice is upheld. The tenancy will continue until it is ended in accordance with the *Act*.

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 14, 2016

Residential Tenancy Branch

