Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KLAHAE PARK HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On April 25, 2018, the Tenant applied for a dispute resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to section 47 of the Act.

At the start of the hearing, I confirmed that the Tenant attended the hearing with two legal advocates: T.B. and S.A. The Landlord's Agent T.A. attended the hearing. All parties provided affirmed testimony.

The Tenant confirmed that she served the Landlord the Notice of Hearing package and the Landlord confirmed receipt of this package. Based on this oral testimony, and in accordance with sections 89 and 90 of the Act, I am satisfied that the Landlord was served with the Notice of Hearing package.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that that complies with the *Act*.

I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?

Background and Evidence

T.A. stated that the tenancy started on December 1, 2015 as a month to month tenancy. Rent was established at a subsidized amount of $550.00 per month, due on the first day of each month. A security deposit of $486.50 was also paid. The Tenant confirmed these details.

T.A. testified that the Notice was posted to the Tenant's door on April 15, 2018 and the reason for the Notice was due to a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

T.A. submitted that the Tenant had been living in the rental complex since March 1, 2011 but moved to her current rental unit on December 1, 2015. Over the course of this time, 10 letters had been issued to the Tenant advising her to remove her belongings which she had left outside of her townhouse and in the surrounding communal areas, extending into the neighbour's carport and the nearby playground. She referred to the pictures that she included in her written evidence and cited the complaint letters from other tenants citing safety concerns as well as theft by the Tenant of items that were donated to Big Brothers. She received a letter from the municipal Bylaw and Licensing Services office advising that the Tenant's behaviour was an infraction of the Good Neighbour bylaw and that the Tenant's excessive accumulation of belongings would need to be rectified by April 7, 2018. She also stated that she received a letter from the Tenant's doctor advising that the Tenant should not be expected to keep up to the timelines expected of a healthy person. However, the Tenant has had a tenancy there for seven years and has demonstrated a continuous pattern of adhering to warning letters and cleaning the property, only to accumulate more and more items to the point of incurring another warning letter. The administrators of the housing society have tried to work with the Tenant over the years, but the Agent testified that the Tenant has been given enough chances to date.

T.B. objected by stating that the Big Brothers incident and the complaints of the neighbours are not material to the issue of the breach and they should not be considered. She questioned if the Landlord provided enough evidence to substantiate a breach of a material term and questioned whether keeping a rental unit tidy is a material term. She reiterated the definition of a material term and outlined the test of a breach of this, and she does not believe the Tenant's behaviour qualifies as such. She referred to the Landlord's warning letter dated March 29, 2018 and stated that the deadline to clean

up the premises of April 2, 2018 was not reasonable and noted that the deadline issued by the Bylaw and Licensing Services office was later. She cited wording in the warning letter that she believed to be contradictory, and she felt that the application of the *contra proferentem* rule of law would apply here to render the consequences of this letter to be seen as unenforceable. She stated that when the Bylaw and Licensing Services office conducted a follow-up inspection, they were satisfied that the issue was remedied. She also submitted that the Tenant is diligent in keeping her property clean, that she was cautioned to maintain this level of cleanliness, and that this is unlikely to re-occur as she is also enlisting the help of her children. She stated that the critical component of a breach is that a reasonable timeline to comply is required; however, in this instance, it must be considered that the Tenant is disabled, that it was a long weekend, and that the warning letter should fail on these grounds as the time frame to comply was not reasonable.

In the alternative, she stated that the Tenant is a disabled woman with two children and she is requesting the maximum allowable time before the end of tenancy so that she can get organized and prepare to move.

T.A. referred to page six of the tenancy agreement which outlined the Tenant's obligation to maintain reasonable health, cleanliness, and sanitary standards and noted that the Landlord may issue a Notice if the Tenant does not rectify any issues after being given a written warning to comply with this standard. T.A. emphasized that the pictures submitted into evidence show that the Tenant still had debris left behind almost two weeks after the deadline of the warning letter and that this additional time given was more than reasonable before finally serving the Notice.

T.B. submitted that cleanliness is vague and subjective and she refuted the Landlord's allegation that the presence of mice demonstrates a level of uncleanliness, as mice are also prevalent in construction zones and there is one nearby. She also pointed to the current photos submitted into evidence documenting that the premises is now clean. She submitted that noting the Tenant's obligations in the tenancy agreement does not mean that this is a material term, and she cited a previous decision of May 23, 2017 where an Arbitrator made a determination that maintenance of reasonable health, cleanliness, and sanitary standards would not be considered a material term.

Analysis

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of section 52 of the *Act*. I find that the Notice meets all of the requirements of section 52.

In addition, I note the wording of Policy Guideline #8 provides the following guidance regarding the determination of a material term of the tenancy. In this particular instance, I find it important to note that in determining what would be considered a material term of the tenancy, "importance of the term in the overall scheme of the tenancy agreement" must be considered. As well, the "Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material". Furthermore, the policy guideline indicates that in order for the Landlord to end the tenancy for a breach of a material term, the Landlord must first inform the tenant in writing that:

- there is a problem;
- they believe the problem is a breach of a material term of the tenancy agreement;
- the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- if the problem is not fixed by the deadline, the party will end the tenancy.

While I agree with T.B.'s stance that cleanliness is somewhat subjective and take note of her reference to a previous decision with respect to this issue, the policy guideline states that "it is possible that the same term may be material in one agreement and not material in another." I find that this means that determining what would be considered a material term is based on the fact pattern of each specific scenario and that it is up to the Arbitrator in each case to evaluate the evidence presented and make a determination on this matter. In the tenancy agreement, it is clear to me that the Tenant's obligation to "maintain health, cleanliness, and sanitary standards throughout the rental unit and the other residential property to which the tenant has access" is of utmost importance in any tenancy and that the intention of this term is to protect the health and safety of the tenant, the premises, and any other occupants of the rental complex.

As the Landlord was notified by the Bylaw and Licensing Services office that there was an infraction, the undisputed evidence is that T.A. served the Tenant with a warning letter advising her that there was a problem, the problem must be fixed by a deadline included in the letter, and if the problem is not fixed by the deadline, the Landlord will end the tenancy. While it is not explicitly stated, I find that it is reasonable to conclude that the wording of T.A.'s statement that "This [warning] will be the last one" is an indication that, due to the repeated cycle of similar behaviours and the numerous subsequent warnings, it is the Landlord's belief that this issue is not trivial in nature and any further breaches that are uncorrected gives the Landlord the right to end the tenancy.

Based on the undisputed evidence before me, it is clear that there is a pattern of similar behaviour where the first warning letter was issued three months into the beginning of the tenancy, over seven years ago, and that nine subsequent warning letters relating to the same behaviour were issued over the remainder of the tenancy. While in other situations, maintaining a reasonable health, cleanliness, and sanitary standards may not be considered a material term, I find that I am satisfied that due to the ongoing and repetitive nature of the Tenant's behaviour, this term in the tenancy would be considered a material term necessary to protect the safety of the Tenant, the rental unit, and the other occupants in the rental complex. In reviewing the pictures submitted by the Landlord after the deadline for compliance in the warning letter had passed, it is evident to me that the amount of debris that the Tenant has accumulated is beyond what a reasonable person would consider reasonable health, cleanliness, and sanitary standards. While I agree that the short timeframe for the Tenant to comply may not be reasonable, I find it important to note that the Landlord has submitted additional photos dated April 4, April 5, April 9, April 15, April 19, April 21, and April 27, 2018 demonstrating that the Tenant still had significant belongings stored around the premises and that she did not serve the Notice until April 15, 2018, which was 13 days after the written demand for compliance. As such, I am satisfied that the Landlord provided a reasonable amount of time for the Tenant to comply.

In reviewing the totality of the evidence before me, while the photos that T.B. submitted show that the Tenant had rectified this problem and satisfied the Bylaw and Licensing Services office on their follow-up inspection of May 3, 2018, I am not satisfied that this pattern of behaviour will not repeat itself should the tenancy continue.

Ultimately, I find that the Landlord sufficiently established that the Tenant's obligation to maintain reasonable health, cleanliness, and sanitary standards was a material term of the tenancy agreement and that the Tenant's repeated behaviour breached this term.

As such, I dismiss the Tenant's Application and pursuant to section 55, I find that the Landlord is entitled to an Order of Possession that takes effect at 1:00 p.m. on May 31, 2018. The Landlord will be given a formal Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit by 1:00 p.m. on May 31, 2018, the Landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The Tenant's Application is dismissed without leave to reapply and the Landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on May 31, 2018. Should the Tenant 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: May 29, 2018

Residential Tenancy Branch