



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC DRI FFT LRE

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a determination regarding their dispute of an additional rent increase by the landlords pursuant to section 43;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

The tenant acknowledged receipt of the 1 Month Notice to End Tenancy for Cause, with an effective date of June 1, 2018 ("1 Month Notice"), which was posted on the tenant's door on April 3, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the 1 Month Notice was deemed served to the tenant on April 6, 2018, three days after posting.

At the beginning the hearing the landlord indicated that they were not seeking a rent increase at the time of the hearing. Accordingly, the tenant's application for a determination on a rent increase was withdrawn.

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?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Background and Evidence

This month-to-month tenancy began on December 1, 2012, with monthly rent set at \$900.00, payable on the first of each month. The landlord collected a security and pet damage deposit in the amount of \$437.50 each deposit, and still holds both deposits.

The landlord submitted the notice to end tenancy providing two grounds:

1. The tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park; and
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the tenant has failed to maintain property in a manner that is required as per the addendum to the tenancy agreement. The landlord provided in evidence a copy of the addendum which states "mow and keep your yard" and "no storage of anything in laundry room".

The landlord submitted a copy of a written notice addressed to the tenant, dated March 19, 2018, which stated "this is your 2nd notice to clean up your yard". On the note the landlord added some handwritten notices to the tenant to "clean up dog poo", "remove stored stuff from laundry rm" and "remove piles of stored stuff from back yard". The landlord also submitted a handwritten note dated May 21, 2013 which stated "1st written notice. Mow your lawn please per agreement". A typed notice dated March 11, 2018 was submitted in evidence which stated "this is your first notice to clean up your yard".

The landlord testified that the tenant has his belongings stored against the duplex's downstairs windows, and has accumulated metal items that posed a hazard and insurance liability.

The tenant does not dispute that the majority of the items are his, but testified that some of the items stored on the property are not his, and were there before he moved in. The tenant also disputes that he has breached a material term of the tenancy agreement, and that some of the items were building supplies he required for his business. The tenant disputes having caused extraordinary damage to the rental unit or site.

The tenant is also requested proper notice from the landlord before the landlord enters the rental property. The landlord responded that he did visit the property to perform yard maintenance, but did not enter the rental unit. The landlord testified that he normally phones or texts the tenant, but has not always given notice before blowing off the leaves from the gutters.

Analysis

Section 47(1) of the *Act* allows a landlord to end a tenancy for cause for any of the reasons cited in the landlord's 1 Month Notice.

A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. As noted in RTB Policy Guideline #8, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the Agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach...must inform the other party in writing:

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

In regards to the landlord's allegation that there has been a breach of a material term of the tenancy agreement, I find that it is undisputed that the tenant had his items stored in the laundry room and on the property despite the previous warnings by the landlord. I am not satisfied, however, that the notices given to the tenant communicated clearly to the tenant that if the tenant failed to address the issues addressed in the notices, that this would constitute a breach of a material term of the agreement that could possibly result in the end of this tenancy. I find that the notes also fail to clearly indicate a deadline for when the tenant must address the problem by.

I am not satisfied that the landlord provided the tenant with an opportunity to correct the breach. The *Act* requires that the landlord give written notice to the tenant that this breach could result in the end of this tenancy. I find that the written warnings given to the tenant do not satisfy the requirements of section 47(1)(h) whereby the landlord is required to give written notice for the tenant to correct the situation. On this basis, I find that the landlord has not met their burden of proof to show that the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord also indicated on the 1 Month Notice that the "the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park". I find that it was undisputed that the tenant had his items stored on the property, which the landlord further supported with photos in his evidence. Although the landlord testified that stored items pose a danger to the property, I am not satisfied that the landlord has provided sufficient evidence to support that the tenant has caused extraordinary damage to the unit or site, or property.

For the reasons cited above, I find that the landlord has failed to demonstrate to the extent required that the tenant has contravened section 47 of the *Act*, and accordingly I am allowing the tenant's application for cancellation of the 1 Month Notice. The

landlord's 1 Month Notice, dated April 3, 2018, is cancelled and is of no force or effect. The tenancy will continue as per the *Act* and current tenancy agreement.

The tenant requested that the landlord comply with the *Act* before entering the property. I am including a reminder for all parties the landlord's obligations under section 29 of the *Act* regarding the landlord's right to enter and inspect the unit under the following conditions:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I find that the tenant is entitled to recover half of the filing fee for this application.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice is allowed. The landlord's 1 Month Notice, dated April 3, 2018, is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the *Act* and tenancy agreement.

I issue a \$50.00 Monetary Order in favour of the tenant for recovery of half of the filing fee. I allow the tenant the above monetary award by reducing their monthly rent payment in that amount. In the event that this is not a feasible way to implement this award, the tenant are provided with a Monetary Order in the amount of \$50.00, and the landlord(s) must be served with **this Order** as soon as possible.

The tenant withdrew his application for a determination of about rent increase.

The landlord was reminded about his obligations under section 29 of the *Act* in relation to access to the rental unit.

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: June 25, 2018

Residential Tenancy Branch