Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOOKOUT HOUSING AND HEALTH SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC LRE ERP PSF

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;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord's agent, ML, ('landlord) testified on behalf of the landlord in this hearing, and was given full authority by the landlord to do so 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 ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence.

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The tenant acknowledged receipt of the 1 Month Notice to End Tenancy for Cause, with an effective date of June 30, 2018(the 1 Month Notice), on May 2, 2017. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

The tenant indicated at the beginning of the hearing that she was withdrawing her claim for the landlord to provide facilities or services as prescribed by the tenancy agreement.

Preliminary Issue – Landlord's Evidence

The landlord testified that he had served both the RTB and the tenant with the landlord's evidence on July 6, 2018.

The tenant requested that the evidence be excluded as the landlord had served the evidence only 6 days before the hearing.

Rule 3.15 of the RTB's Rules of Procedure establishes that "the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing"

The definition section of the Rules contains the following definition:

> In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.15 and the definition of days, the last day for the landlord to file and serve evidence as part of their application was July 5, 2018.

This evidence was not served within the timelines prescribed by rule 3.15 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

As I am not satisfied that the tenant was served with the landlord's evidence within the timeline prescribed by rule 3.15, which would allow the tenant ample time to review and respond to this evidence, the landlord's evidence will be excluded for the purposes of this hearing.

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

Is the tenant entitled to an order requiring the landlord to make emergency repairs to the rental unit?

Background and Evidence

This month-to-month tenancy began on April 20, 2017 with monthly rent currently set at $375.00, payable on the first of each month. The landlord collected, and still holds, a security deposit and pet damage deposit in the amount of $187.50 each deposit. The tenant currently still resides in the suite.

The landlord served the notice to end tenancy providing the following grounds:

"*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's agent, ML, testified that despite several warnings, the tenant has breached a material term of the tenancy agreement by allowing her dog out into the common areas, unattended, on several occasions. Furthermore, the landlord testified that both the landlord and other occupants are worried about their health and safety as the pit-bull has, and continues to defecate and urinate in public areas, which the tenant does not always clean. The landlord called a witness to testify that this is the case.

The tenant admits that her dog was a puppy, and as her unit was small in size, she had allowed her dog into the common area where the dog did urinate and defecate. The tenant testified that her dog, although a pitt-bull, is very friendly, and she has always cleaned up after her pet. She also testified that she has since stopped allowing her dog to do this, and that the reports from other tenants were not credible. The tenant testified that other dogs also resided there, and not all the urine and feces can be attributed to her dog.

The tenant also testified that the date of the 2 Month Notice was incorrectly dated June 30, 2018 when the actual date should be May 2, 2018.

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 the landlord failed to indicate which term of the tenancy agreement the tenant has breached. In the absence of a copy of the tenancy agreement, and in the absence of sufficient evidence to support which material term of the tenancy agreement that the tenant breached, I am not satisfied 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.

Furthermore, section 52 of the *Act* requires that the 1 Month Notice be dated and signed by the landlord giving the Notice. It was undisputed that the landlord had noted the incorrect date on the 1 Month Notice as June 30, 2018.

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*. I also find that the

1 Month Notice does not meet the requirements of section 52 of the *Act.* Accordingly I am allowing the tenant's application for cancellation of the 1 Month Notice. The tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

I find that the tenant has not provided sufficient evidence to support that she had made proper written requests to the landlord for emergency repairs, and I am not satisfied that the tenant has provided sufficient evidence to support that the landlord has failed to abide by the Act in entering the tenant's rental unit. On this basis, these portions of the tenant's applications are dismissed with leave to reapply.

Conclusion

The landlord's 1 Month Notice to End the Tenancy that was served to the tenant on May 2, 2018, with an effective date of June 30, 2018, is cancelled and of no continuing force, with the effect that this tenancy continues until ended in accordance with the *Act*.

The remaining portion of the tenant's application is dismissed with leave to reapply.

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: July 13, 2018

Residential Tenancy Branch