



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord's agent C.M. (herein referred to as "the landlord") and Witness M.Z. attended the hearing on behalf of the corporate landlord. Tenant J.T., Occupant J.Z., Advocate M.H., and Occupant J.Z.'s Support Worker/Witness A.M. attended the hearing and are herein referred to as "the tenants". Advocate M.H. primarily spoke on behalf of the tenants.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenants' Notice of Dispute Resolution Proceeding and evidence materials personally served, and the tenants confirmed receipt of the landlord's 18-page evidence package served by Canada Post registered mail. However, the tenants stated that they did not receive an additional last page (which would have been the 19th page) of the landlord's evidence package, that being a copy of Tenant J.T.'s original rental application form. All of the other pages in the landlord's evidentiary package were numbered, except for this last page.

Based on the testimonies of the parties and the evidence before me, I find that the last, unnumbered page of the landlord's documentary evidence was not served to the respondent as required by Rule 3.15 of the Residential Tenancy Branch Rules of Procedure, which states, in part:

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.

Therefore, I have excluded this one page from the documentary evidence before me for my consideration. However, the landlord was at liberty to provide verbal testimony in relation to this document.

In summary, based on the undisputed testimonies of the parties, I find that both parties were served in accordance with section 89 of the *Act*, with the exception of the 19th page of the landlord's documentary evidence, as noted.

Preliminary Issue – Amendment to the Tenant's Application

I confirmed with both parties the status of Occupant J.Z. as his name was not listed on the written tenancy agreement submitted into evidence. The landlord stated that only Tenant J.T. is recognized as a tenant in relation to the rental unit. The landlord stated that the Occupant J.Z. is not a tenant on the tenancy agreement, and that Tenant J.T. is the only tenant listed on the written tenancy agreement and the only tenant signatory to the tenancy agreement. The landlord further stated that on Tenant J.T.'s application for tenancy, only Tenant J.T. is listed as an applicant for tenancy and Occupant J.Z. is listed as an emergency contact. The tenants stated that Occupant J.Z., who is Tenant J.T.'s adult son, has resided with Tenant J.T. for many years and the tenants consider him a tenant of the tenancy agreement.

I find that since the Occupant J.Z. is not listed on the tenancy agreement, nor has he signed the tenancy agreement, he is not a party to the tenancy agreement and therefore should not be named as a party on the application. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the tenant's application to remove Occupant J.Z. as a named party to this application.

Procedural Matters

As a procedural matter, I explained to both parties that section 55 of the *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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, I explained to both parties that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the Notice to End Tenancy?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence. Both parties agreed to the following information pertaining to the tenancy agreement. The tenancy began on February 1, 2013 as a one-year fixed term tenancy. At the end of the fixed term, the tenancy agreement converted to a month-to-month tenancy. Current monthly rent is \$670.47 payable on the first of the month. The tenant paid a \$300.00 security deposit at the beginning of the tenancy, which continues to be held by the landlord.

The tenant confirmed receiving the landlord's One Month Notice posted on the rental unit door, but were unsure of the exact date that it was served. The landlord testified that the One Month Notice was posted on the tenant's door on May 24, 2018, and submitted into documentary evidence a signed Proof of Service in support of this testimony.

The tenants submitted a copy of the landlord's notice into evidence, which states an effective move-out date of June 30, 2018, with the following boxes checked off as the reasons for seeking an end to this tenancy:

Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property.*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.*
- *jeopardize the lawful right or interest 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.

The "Details of Cause" section of the One Month Notice was blank, and no further description or details regarding the cause for ending the tenancy, or which material term of the tenancy agreement was allegedly breached, was noted on or attached to the notice.

A hand-written letter from Tenant J.T., dated May 30, 2018, was submitted into documentary evidence. In the letter, Tenant J.T. disputed the One Month Notice, noting that she was not aware of any damage to the residential property caused by her son. Further to this she referenced an incident involving her son and a driver of a car.

In her letter, Tenant J.T. indicated that the matter was under investigation by the RCMP and so far, her son had been found innocent, and he was considering pressing charges against the driver of the car. Regarding the landlord's assertion that a material term of the tenancy was breached, Tenant J.T. referenced that the only letter she received about a notice of breach pertained to smoking marijuana in the rental unit, and that they ceased smoking in the unit since receiving that notice.

The tenants submitted into documentary evidence a letter from a mental health and substance use clinician with the local health authority regarding, in summary:

- the level of psychosocial rehabilitation support Occupant J.Z. receives to address his chronic mental illness;
- the support team's previous assistance to Occupant J.Z. in addressing the landlord's concerns pertaining to cleanliness of the rental unit; and
- the support team's continued availability to the landlord in order to "mitigate any and all concerns" to maintain Occupant J.Z.'s wellbeing and housing.

The landlord submitted into evidence a copy of the security report for May 23, 2018. The landlord called on Witness M.Z., a security staff member, to provide testimony regarding his interaction with Occupant J.Z. on the evening of May 23, 2018.

Witness M.Z. testified that he came across Occupant J.Z. in a stairwell, with a pipe and what appeared to be drugs, at approximately 10:37 p.m. He stated that Occupant J.Z. admitted that he was about to do some drugs. Witness M.Z. acknowledged that Occupant J.Z. apologized and went to his rental unit when he was asked to do so.

Occupant J.Z. testified that he did not proceed to use the drugs in his rental unit, but instead went off-site from the rental property to use the drugs.

As part of the tenancy agreement, the landlord testified that the tenants had signed a "Residential Tenancy Agreement Addendum for Crime Free Housing" which prohibits "any criminal activity on the premises or property" and stipulates that "a single violation shall be good cause for a notice to end a Residential Tenancy Agreement". The landlord submitted the addendum into documentary evidence.

The landlord referred to a warning letter dated September 16, 2017 that was sent to the tenants regarding a complaint of marijuana smoke coming from their rental unit. The letter stated that it considered this situation a breach of contract. The letter further stated that this was a "FINAL WARNING" and any more complaints would result in a notice to end tenancy.

The tenants testified that they rectified the issue regarding marijuana smoke after receiving the above-noted warning letter and there have been no more complaints.

The landlord expressed concerns regarding Occupant J.Z.'s drug use and mental health issues given the large number of families with children residing in the residential complex.

The tenants provided assurances that Occupant J.Z.'s support team have increased their level of care to address the drug use issue that only recently came to their attention, and they testified that in the past week the support team visited Occupant J.Z. four times. The tenants committed that there would be no further drug use in the rental unit or on the property as Occupant J.Z. would go to approved sites in order to use drugs safely.

Analysis

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

The tenants acknowledged receiving the landlord's One Month Notice posted on their rental unit door, but could not recall the actual date it was received. Therefore, I refer to section 90 of the *Act* which provides that a notice served by posting on the door is deemed received on the third day after it is attached. In this case, the landlord provided proof of service to confirm that the One Month Notice was posted on the tenants' door on May 24, 2018. As such, I find that the One Month Notice was deemed received by the tenants on May 27, 2018.

The tenants filed an application to dispute the notice on June 1, 2018. Therefore, I find that the tenants have applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove the grounds for the notice and that the notice is compliant with section 52 of the *Act*.

I have addressed each of the grounds for the notice selected by the landlord in the following sections.

Illegal Activity

I confirmed with the landlord that no police involvement was required in relation to the grounds for issuing the One Month Notice, and that the landlord did not submit any evidence to support

any allegation of illegal activity, such as charges laid or arrests made, fines levied for contravention of legislation, etc.

The landlord called upon Witness M.Z. who provided sworn testimony confirming his written statement that he came across Occupant J.Z. alone in the stairwell at approximately 10:30 p.m. and when questioned, Occupant J.Z. stated that he was about to use drugs. If the landlord felt they had sufficient evidence of illegal activity, it would be reasonable for them to take action by contacting the police. In this case, the landlord did not contact the police to report illegal activity.

Further to this, the landlord did not provide any testimony or evidence that the tenant's purported engagement in illegal activity resulted in: damage to the landlord's property; affected the quiet enjoyment, security, safety or physical well-being of another occupant; or jeopardized the lawful right or interest of another occupant or the landlord.

In this case, the Occupant J.Z. did not cause any damage, was not disruptive to any other occupants, reportedly apologized to Witness M.Z. and followed the directions he was given.

Therefore, I find that the reasons selected related to illegal activity are not applicable to this matter based on insufficient evidence submitted by the landlord to support ending the tenancy for these reasons.

Breach of Material Term of Tenancy Agreement

Pursuant to section 47(1)(h) of the Act, the only recognized cause for ending a tenancy with a one month notice for breach of a term of the tenancy is if the breached term is a "material" term of the tenancy agreement.

A material term is defined in the Residential Tenancy Policy Guideline 8. Unconscionable and Material Terms, as a term that is so important that the most trivial breach of that term gives the other party the right to end the agreement. The Policy Guideline provides further direction on the required criteria to end a tenancy for breach of a material term. It is important to note that all of the following criteria must be met by the party alleging the breach of the material term:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – 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 this matter, the landlord failed to specify on the One Month Notice, in the “Details of Cause” section which material term the tenant breached, or provide any description regarding the details related to the reasons for issuing the One Month Notice.

The “Details of Cause” section of the One Month Notice gives clear direction regarding detailed information to be provided about the reason for issuing the notice, as follows:

*Include any dates, times, people or other information that says who, what, where and when caused the issue. The RTB [Residential Tenancy Branch] **may cancel the notice if details are not described.** Attach separate sheet(s) if necessary (signed and numbered).*

Tenant J.T.’s hand-written letter dated May 30, 2018, in which she disputes the One Month Notice, references issues unrelated to the reasons provided by the landlord as the cause for issuing the One Month Notice, such as a previous warning to stop smoking marijuana in the rental unit.

I find that this is an indication of confusion surrounding the reasons for the landlord issuing the One Month Notice. I find that this confusion is a result of the landlord failing to complete the “Details of Cause” section of the One Month Notice with the particulars regarding the cause for issuing the notice.

The landlord issuing the One Month Notice is required to provide these details to ensure that the tenant is clearly aware of the case being made against them and has a full and fair opportunity to be prepare their evidence in order to dispute those claims, should they wish to.

Based on the landlord’s submitted evidence and testimony, the landlord appeared to focus their grounds for ending the tenancy due to a breach of a material term on the fact that Tenant J.T. signed the Addendum for Crime Free Housing at the beginning of her tenancy.

However, I note that the landlord has not signed this Addendum. Therefore, had this been a material term of the tenancy so significant it could end the tenancy, I would expect it to be signed by both parties in order to convey a clear understanding on behalf of both parties regarding the obligations of this term of the tenancy agreement.

Although section 47 of the *Act* provides that a landlord may end a tenancy for cause due to a tenant or a person permitted on the property by the tenant engaging in illegal activity, as I explained under my consideration of “Illegal Activity” earlier in this decision, the main impetus for ending a tenancy for that reason is that the illegal activity resulted in damage, an adverse affect on another occupant, or jeopardized a lawful right or interest of an occupant or the landlord.

Therefore, if the landlord is relying solely on a claim that the tenant has breached a material term of the tenancy agreement by failing to abide by the Addendum for Crime Free Housing due to admitting an intent to use drugs, it has to be considered whether this is an attempt to contract outside of the *Act*. As explained above, breach of a **material** term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so, would be the only term of a tenancy agreement for which a breach could be grounds for ending the tenancy.

Section 5 of the *Act* provides that contracting outside of the *Act* is not permitted, as follows:

- 5 (1) *Landlords and tenants may not avoid or contract out of this Act or the regulations.*
- (2) *Any attempt to avoid or contract out of this Act or the regulations is of no effect.*

As I do not find that the Addendum for Crime Free Housing is a material term of this tenancy agreement, I find that the landlord has attempted to contract outside of the *Act* by claiming that the tenant's breach of this term constitutes grounds to end the tenancy. Therefore, per section 5(2) of the *Act*, I find this claim by the landlord to be of no effect.

Therefore, based on the testimonies of both parties and the evidence before me, on a balance of probabilities, I find that the landlord failed to provide the required details of cause on the One Month Notice, and I find that the landlord failed to fulfill all the criteria required for ending a tenancy due to a breach of a material term. As such, I find that the landlord has failed to satisfy the burden of proving the grounds for ending the tenancy for cause based on this reason.

Conclusion

The tenants were successful in their application to dispute the landlord's One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated May 24, 2018 is cancelled and this tenancy shall 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: August 10, 2018

Residential Tenancy Branch