Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE, FFT

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 (the One Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- 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.

The landlord, the landlord's assistant and the tenant 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 had legal counsel (counsel) attend the hearing to assist with evidence submissions.

While I have turned my mind to all the documentary evidence, including the testimony of the parties and witness testimony, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) which was sent to the landlord by way of registered mail on August 18, 2018. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application.

The tenant acknowledged receipt of the landlord's evidentiary package which was posted to the tenant's door on August 26, 2018. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's evidentiary package. The

tenant confirmed that he was able to access the contents on the USB stick in the landlord's evidence.

The tenant testified that they provided their evidence to the Residential Tenancy Branch (RTB) a couple days before the hearing but did not provide any evidence to the landlord.

Rule 3.14 of the RTB Rules of Procedure (the *Rules*) establishes that all documentary evidence to be relied on at the hearing must be received by the RTB and the respondent not less than 14 days before the hearing. I find that the tenant did not serve the landlord with their evidence package in accordance with Rule 3.14 and that the landlord may be prejudiced by this as they did not have a chance to review and respond to the tenant's evidence package. For this reason the tenant's evidence package is not accepted for consideration.

The tenant confirmed that they received the One Month Notice on the same date it was posted to the door of the rental unit on August 05, 2018. In accordance with section 88 of the *Act,* I find that the tenant was duly served with the One Month Notice on August 05, 2018.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

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 recover the filing fee for this application from the landlord?

Background and Evidence

A tenancy agreement and addendum signed by both parties were provided and which indicate that this tenancy began on May 01, 2018, with a current monthly rent of $5,900.00, due on the first day of each month. The landlord confirmed that they retain a security and pet damage deposit totaling in the amount of $5,900.00.

Clause 17 of the addendum states that the tenant will use the residential premises for private residential purposes only and not for illegal, unlawful, commercial or business purposes.

Clause 27 of the addendum states that it is a material term of this Agreement that items stored inside the rental unit must be limited in type and quality so as not to present a potential fire or health hazard, or to impede access to, egress from or normal movement within any area of the rental unit.

A copy of the signed landlord's One Month Notice dated August 05, 2018, was entered into evidence. In the One Month Notice, requiring the tenant to end this tenancy by September 30, 2018, the landlord cited the following reasons for the issuance of the One Month Notice:

> *Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.*
>
> *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.*
>
> *Tenant has not done required repairs of damage to the unit/site*
>
> *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 also provided in their evidence:

- A copy of a 'Detail of Causes' (Details) in which the landlord states that the tenant is using the garage as a commercial storage facility for the picking up and dropping off of furniture being sold by the tenant. The landlord states that this activity is in contravention of the Act, municipal by-laws and clause 17 of the tenancy agreement in addition to being a fire hazard which is likely to damage the landlord's property. In this document, the landlord states that it is their position that clause 17 of the tenancy agreement is a material term due to the increased risks in liability related to activities associated with operating a business. The landlord further states in the Details that a 10 foot cube van associated with the business is also frequently parked at the rental unit. The landlord states that vehicles of that weight are not permitted to be parked over night at the

residential premises unless in an enclosure. The landlord also refers to the contravention of clause 27 of the addendum by the tenant which is related to the storage of items which are filling up the garage and which the landlord contends is a fire hazard as well as a risk to the landlord's insurance coverage due to the business activities associated with the materials being stored, removed and picked up. In addition to the above, the landlord states that the tenant is storing commercial goods on the driveway on a trailer which the landlord has verbally requested for the tenant to have moved and which had not been done after written notice to do so and as of the date that the One Month Notice was served to the tenant. Finally, the landlord refers to oil/transmission stains on the driveway and road from the tenant's business related pick-up truck which have not been removed after written notice to do so and which the landlord considers a breach of clause 10(2), which is associated with the tenant repairing damage caused by their neglect, and which the landlord considers a material term of the tenancy agreement;

- A copy of a letter from the landlord to the tenant dated May 18, 2018, in which the landlord reaffirms important aspects of the tenancy agreement including the parking of the tenant's car and business pick-up truck, only, and a reminder to provide payment for insurance bill;
- A copy of a letter from the landlord to the tenant dated July 21, 2018, in which the landlord requests the tenant to immediately remove oil/transmission stains from both the driveway and the road, to remove trailer and other construction material from the premises, to cease using premises for furniture storage and cease leaving furniture on driveway with a sign that indicates "free";
- A copy of a timeline of events which details what has occurred during the tenancy including the sending of a letter on July 21, 2018, inspecting the property on July 31, 2018, and issuing the One Month Notice on August 05, 2018. The timeline indicates that the trailer with the materials is gone as of the time of the writing and mentions an incident in which the tenants attended the rental unit to water the lawn and the tenant asked them to leave;
- Copies of various pictures taken from within and from the outside of the rental unit in May 2018;
- A copy of a witness statement dated August 23, 2018, from a neighbour regarding a delivery van frequently coming and going from the premises;

- A copy of a witness statement dated August 21, 2018, from a different neighbour regarding people coming and going from the premises as well as ongoing loading and unloading of large objects from a moving truck; and
- A copy of a statement from the assistant, who is the landlord's partner and a party to the dispute, which indicates that he has witnessed furniture stored in the garage stacked to the roof on July 20, 2018, as well as stains on the driveway/road. The assistant to the landlord also states that during the inspection on July 31, 2018, the tenant stated that he sells furniture. The statement goes on to say that the furniture was reduced by half in the time from July 20, 2018, to the time of the inspection on July 31, 2018.

The landlord submitted that they would like the tenant to fulfil the terms of the tenancy agreement and not to use the rental unit for business purposes. The landlord testified that there has been extraneous furniture being stored in the garage and a commercial moving van parked at the residential premises for days or weeks at a time associated with the furniture in the garage which is being dropped off or picked up. The landlord stated that they believe that the tenant is operating a business from the garage involving the sale of furniture due to ongoing activity involving multiple parties attending the rental unit and other parties loading and unloading the truck for the tenant.

The landlord stated that they served a letter to the tenant on July 21, 2018, requesting for the tenant to comply with the tenancy agreement. The landlord testified that a significant portion of the furniture was removed at the time that they did an inspection of the premises on July 31, 2018.

The landlord stated that there are oil/transmission stains on the driveway and road caused by the tenant's business truck which have not been cleaned after the landlord requested it in writing. The landlord stated that there has also been a flatbed trailer with construction materials on it that has since been removed as of the date of the hearing as well as railway ties that were covered by a tarp.

The landlord's assistant stated that the landlord was required to purchase property insurance with a 5 million dollar liability but has only provided proof of insurance with 2 million dollar liability. The landlord's assistant stated that the property is only insured for residential use and that the tenant's commercial use of the property puts the landlord's liability at significant risk due to the potential for claims for a loss to be denied due to the commercial activity of the tenant at the residential premises.

The assistant stated that the tenant's storage of excess furniture in the rental unit is in contravention of clause 27 in the tenancy agreement, which the assistant states is a material term due to the increased risks associated with combustible material being stored in the garage. The assistant stated that, although the furniture has been temporarily removed from the rental unit, they believe that the tenant is using the garage for business purposes which were not disclosed to the landlord prior to the tenancy. The assistant maintained that this business activity on the premises is in contravention of municipal by-laws, the Act and the tenancy agreement. The assistant submitted that the neighbours have been unsettled due to the traffic and activity coming from the rental unit.

The tenant disputed the landlord's statement that he was operating a business from the rental unit and that he had workers. The tenant stated that he has a full time job related to construction and that the pick-up truck is owned by the company he works for. The tenant submitted that he had previously cleaned some of the oil/transmission stains when requested but that his company only recently fixed the problem with the truck so there were more stains after the initial ones. The tenant stated that he informed the landlord that when the problem was fixed with the truck, the tenant would clean the affected areas.

The tenant testified that all of the old furniture in the rental unit was for previous personal use and that he has been selling it or giving it away. The tenant denied that there have been many people coming and going from the rental unit, that it is mainly friends who are coming to visit them two or three times a week. The tenant stated that the cube van is his friend's van that he has been borrowing to move the furniture from the garage and the people helping him are his wife's cousins. The tenant stated that it was actually one of the neighbours who took the couch that was on the driveway for free.

The tenant testified that the construction materials on the flatbed trailer were not for commercial use and the railroad ties are for personal use but confirmed that the flatbed trailer is gone.

The tenant submitted that the letter from the landlord dated July 21, 2018, was actually mailed to him on that same date and he did not receive it until July 31, 2018. The tenant questioned why he was given an eviction notice only 15 days after the date of the letter notifying of the problems.

The tenant testified that he has continued to clean up the garage and around the rental unit and there are no issues with egress or ingress.

The tenant submitted that the landlord was on the property without giving proper notice and they want to suspend or set conditions on the landlord's right to entry as well as to have the landlord comply with the *Act*.

Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. 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. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenant disputed this notice on August 15, 2018, and since I have found that the One Month Notice was served to the tenant on August 05, 2018, I find that the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*.

I find the landlord bears the burden to prove that the tenant has put the landlord's property at significant risk, engaged in illegal activity that has, or is likely to damage the landlord's property, not done required repairs of damage to the unit/site and has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Residential Tenancy Policy Guideline # 8 states that to end a tenancy for breach of a material term the landlord must inform the other party in writing that:

- *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…*

I find that the letter mailed to the tenant on July 21, 2018, notifying of the breaches of the tenancy agreement, was deemed served to the tenant on July 26, 2018, in accordance with section 88 of the *Act*. I find that the inspection was on July 31, 2018, which was only five days from the day that the tenant is considered to have received the notice of breaches. I find that the landlord did not clearly notify the tenant in that letter that July 31, 2018, was the date that all the issues in the letter must be resolved as there is no actual deadline in the letter for which to have the problems fixed, the letter just indicates to fix the problems immediately. I find that this deadline of immediately is not reasonable as per the policy guideline as there is no deadline given to the tenant to allow the tenant time to correct the issues.

Although there may have been breaches of material terms of the tenancy agreement, I find that the landlord has not followed the correct process to end a tenancy for a breach of a material term. For this reason I find that the landlord does not have sufficient grounds to end the tenancy for a breach of a material term of the tenancy agreement which was not corrected after written notice to do so.

I have reviewed all documentary evidence including the affirmed testimony and, on a balance of probabilities, I find the landlord has not provided sufficient evidence of a business being run by the tenant out of the rental unit. I find that it is undisputed that the tenant has sold furniture that has been in the rental unit but this is not conclusive evidence that he is running a business. The evidence that the landlord has provided is mainly circumstantial and is very vague in the descriptions of people coming and going from the rental unit without specific details to demonstrate the actual frequency. I find that excess furniture being stored in the garage is not conclusive evidence of a business being run out of the garage.

I find that there are multiple plausible explanations for the activities around the rental unit including the possibility that the furniture has been for personal use in the past as the tenant has testified and that the increased activity was due to the tenant responding to the landlord's request to remove the furniture being stored. I find that the pictures provided just show various items stacked around a garage is not definitive evidence to conclusively demonstrate that the tenant is operating a business that would put the landlord's insurance liability at significant risk.

Although it is possible that the excess furniture may have been a significant risk and a breach of a term of the tenancy agreement, I find that the landlord has admitted that the

tenant had taken steps to reduce and remove the furniture from the rental unit and I accept the tenant's testimony that they have corrected the problem with excess furniture being stored at the rental unit. I find that the landlord has not demonstrated that there continues to be a significant risk due to the storage of the furniture as there was no second inspection completed by the landlord after the initial inspection, to confirm that the tenant has not corrected the issues and that there continues to be a breach of a material term of the tenancy agreement.

I find that the landlord refers to illegal activity which has or is likely to cause damage when referring to the tenant having the cube van parked in the driveway or on the road as they consider it to be in breach of the municipal by-law due to the weight of the van; however, the landlord does not actually provide the actual weight of trucks that are not allowed to be parked overnight in the municipality or provide the weight (or a close approximation) of the weight of the van to establish having it parked at the rental unit is in violation of the by-law. I further find that the landlord has not provided any evidence that the municipality has found the tenant to be in violation of any by-laws. I find that the landlord has not demonstrated how the cubed van being parked at the rental unit has or is likely to cause damage.

In regards to the amount of liability coverage for insurance purchased by the tenant, I find that the landlord has not provided any evidence of the amount of insurance that the tenant actually has or evidence that the difference in coverage amounts, from what the landlord is requesting to what the tenant has purchased, presents a significant risk in liability for the landlord. I further find that the landlord has not provided any evidence that they have addressed this issue with the tenant, provided a deadline for the problem to be corrected in writing and that notified the tenant that it is a material term of the tenancy agreement.

Therefore, based on a balance of probabilities and the above, I find the landlord has failed to prove that they have sufficient cause to issue the One Month Notice to the tenant.

For this reason, the One Month Notice dated August 05, 2018, is set aside and this tenancy continues until it is ended in accordance with the *Act*.

In regards to the Application to suspend or set conditions on the landlord's right to enter the rental unit and to have the landlord comply with the *Act*, I find that the tenant has provided no evidence to demonstrate that the landlord has given notice to enter the

rental unit in a frequency or manner that is in contravention of the Act or that the landlord has not complied with the Act in any other way. The Residential Tenancy Policy Guideline #1 allows for the landlord to enter the yard to complete maintenance without giving a notice for entry, as long as it is reasonable.

For the above reasons I dismiss the Application to suspend or set conditions on the landlord's right to entry and to have the landlord comply with the Act, with leave to reapply.

As the tenant has been successful in their application to have the One Month Notice set aside, I allow them to recover their filing fee from the landlord.

I note that if the tenant breaches a material term of the tenancy agreement in the future and the landlord gives proper notice of the breach, which is not corrected within a reasonable time, there may be another One Month Notice served which may have a different result.

Conclusion

The tenant is successful in their Application. The One Month Notice dated August 05, 2018, is set aside and this tenancy will continue until it is ended in accordance with the *Act*.

Pursuant to section 72 of the *Act,* I order that the tenant may reduce the amount of rent paid to the landlord from a future rent payment on one occasion, in the amount of $100.00, to recover the filing fee for this application.

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: September 13, 2018

Residential Tenancy Branch