Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the "*Act*") to cancel a One Month Notice to End Tenancy for Cause (the "One Month Notice"), and for the recovery of the filing fee paid for this application.

The Tenant and the Landlord were both present for the duration of the teleconference hearing. The parties confirmed that the Notice of Dispute Resolution Proceeding package and copies of each party's evidence was served to the other party as required. Neither party brought up any issues regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure.* However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

During the hearing, the parties clarified that only one person was named on the tenancy agreement and additional people residing in the rental unit were occupants. As the Tenant had named three applicants on the Application for Dispute Resolution, this was amended to name only the Tenant listed on the tenancy agreement. This amendment was made pursuant to Section 64(3)(c) of the *Act.*

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on November 1, 2013. Monthly rent is currently $1,450.00 and a security deposit of $700.00 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the parties.

On September 26, 2018, the Landlord served the Tenant with a One Month Notice by registered mail. The One Month Notice was submitted into evidence and states the following as the reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in 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 effective end of tenancy date of the One Month Notice was stated as November 1, 2018. The Tenant confirmed receipt of the One Month Notice on September 26, 2018 and filed an Application for Dispute Resolution on October 5, 2018.

The Landlord provided testimony that the One Month Notice was served due to the following five reasons:

1. Clutter on the exterior of the home, including yard and driveway
2. The number of vehicles on the property
3. The number of occupants in the rental unit
4. The Tenant running a business on the rental property
5. Storing a large recreational vehicle (RV) on the property

The Landlord further stated that when attending the rental property in May 2018, he noticed the additional vehicles on the property, as well as the RV. He stated that there were four vehicles, two motorcycles, and the RV. The Landlord stated that at the start of the tenancy, it was determined that there would be parking for one vehicle.

The Landlord also stated that it was at this time that he became aware that there was an additional occupant in the home. He noted that the tenancy agreement was made between himself and the Tenant, with her daughter as an additional occupant. However, he is aware that there is currently a third person living in the home. The Landlord submitted the Rental Application as documentary evidence to show that the original arrangement was for the Tenant and her daughter to reside in the unit.

The Tenant provided testimony that her partner moved into the rental unit in June 2016, which the Landlord was aware of. She also noted that the original tenancy agreement was signed in 2013, with no new agreement signed since then.

The Landlord confirmed that he was not concerned about the number of occupants in the rental unit, but instead that the Tenant did not have permission to have another occupant. He stated that he was not aware that the Tenant's partner had moved in until he was at the property in May 2018.

The Landlord submitted the tenancy agreement addendum into evidence and pointed out clause 4, which states that the Tenant is responsible for maintaining the lawn and garden and must keep the home free of clutter and debris. The Landlord submitted photos into evidence, showing chairs and other items left at the bottom of the stairs outside. There is also a photo of the Tenant's shed in the backyard, the RV and a utility trailer.

The Landlord also submitted two letters from neighbours of the rental property. One letter, dated July 17, 2018, states that the neighbour is unhappy with the condition of the property and states that it impacts their ability to enjoy their own home and property. The second letter, which is undated, notes that the yard and property of the rental unit is unkempt and cluttered with items.

The Tenant provided testimony that she was not aware of any concerns regarding the condition of the rental property, or any concerns from the neighbours. She also stated that her daughter has a vehicle now, as does her partner. They have since sold the two motorbikes. The Tenant also stated that the Landlord was aware that they had an RV,

as they previously had a cargo trailer and a utility trailer on the property. She noted that the utility trailer in the photos submitted by the Landlord does not belong to her.

The Landlord submitted that he had many verbal conversations with the Tenant regarding his concerns and sent her a letter on June 30, 2018. The letter was submitted into evidence and outlines the Landlord's concerns with additional occupants, parking, and storage.

Regarding storage, the Landlord stated that in 2015, the Tenant made an arrangement to rent the garage as storage for a monthly amount of $200.00. The Landlord asked the Tenant for the garage space back in May 2018 and states that the Tenant continues to use the space which is why he continues to cash the $200.00 monthly cheques. In the letter dated June 30, 2018, the Landlord provides 45 days for the Tenant to vacate the garage.

The Tenant agreed that there was a verbal agreement between the parties for her to rent the garage for an additional $200.00 a month. She provided testimony that it was not clear that the Landlord wanted the garage back as he had continued to cash the cheques for $200.00 per month. In a letter from the Tenant to the Landlord, dated August 6, 2018, the Tenant requests one month notice from the Landlord through service of a Notice Terminating or Restricting a Service or Facility form.

The Landlord also testified as to the Tenant using the shed for business purposes. He clarified that he had provided permission for the Tenant to put a shed on the property for extra storage, but he became aware that she was running a business from the shed. He noted that the tenancy agreement states that the rental property must not be used for anything other than personal use.

The Landlord referenced clause 9 of the tenancy agreement addendum which states that the property shall only be used for residential purposes. This clause also states that no one else shall live in the rental unit other than those stated on the tenancy agreement.

The Tenant submitted that she had a casual business that she has since ended. She testified that the Landlord was aware of this as she started in January 2015. She stated that she stored items for her business in the shed on the rental property, and then would bring the items out for customers to pick up from the carport.

After receiving the letter of concern from the Landlord, the Tenant stated that she sold most of the items and is no longer conducting this work. The Tenant testified that the Landlord had been aware of her use of the shed, and had not indicated any concerns prior to May 2018 when he attended the property.

A second letter was sent from the Landlord to the Tenant on September 24, 2018. The letter was submitted into evidence and states that the Tenant had disregarded the previous warning letter. The letter further states that complaints have been received regarding the condition of the yard and carport, as well as the RV being stored on the property. The letter states that a One Month Notice is attached.

The Tenant submitted a response letter to the Landlord, dated August 6, 2018. The letter states that the Tenant will vacate the garage and also responds to the Landlord regarding the concern with the trailer and the parking.

Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows:

I refer to Section 47(4) of the *Act* which states that a tenant has 10 days in which to dispute a One Month Notice. As the Tenant received the One Month Notice on September 26, 2018 and applied to dispute the notice on October 5, 2018, I find that she applied within the timeframe provided by the *Act.* Therefore, the issue becomes whether the reasons for ending the tenancy on the One Month Notice are valid.

I also note that in accordance with rule 6.6 of the *Residential Tenancy Branch Rules of Procedure,* when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for ending the tenancy are valid.

The first reason for ending the tenancy on the One Month Notice was that there is an unreasonable number of occupants in the rental unit, pursuant to Section 47(1)(c) of the *Act*.

However, I find no evidence before me to establish that there was an unreasonable number of occupants in the rental unit. The Landlord provided testimony that the One Month Notice was not provided because of the number of occupants in the unit, but

instead because the Tenant did not request permission to have another occupant in the unit.

Therefore, I cannot find that this ground was a valid reason for ending the tenancy in accordance with Section 47(1)(c) of the *Act.* I am not satisfied that there are an unreasonable number of occupants in the rental unit, as the Landlord submitted no evidence or testimony of such.

The second reason for ending the tenancy on the One Month Notice was a breach of a material term of the tenancy agreement that was not corrected within a reasonable time to do so, pursuant to Section 47(1)(h) of the *Act.*

Section 47(1)(h) of the *Act* states the following in regard to ending a tenancy due to a breach of a material term:

> (h) the tenant
>
> > (i) has failed to comply with a material term, and
> >
> > (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Residential Tenancy Policy Guideline 8: Unconscionable and Material Terms further provides the following regarding ending a tenancy due to a breach of a 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.’

Upon review of the documentary evidence submitted by the Landlord, in the letter dated June 30, 2018, the Landlord stated in the letter that the Tenant must ask permission to have another occupant in the rental unit ‘immediately’. I do not find this request to be a reasonable timeframe.

The Landlord also requested in the letter that the Tenant vacate the garage storage space within 45 days. However, as noted by both parties during the hearing, as well as stated in the June 30, 2018 letter, the garage storage was a verbal arrangement and there was no formal agreement.

Therefore, I cannot determine that the use of the garage as storage was a material term of the tenancy agreement. Policy Guideline 8 provides a definition of material term as the following:

> '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'.

Regardless of the existence of a verbal contract regarding the use of the garage, I do not find the use of the garage space to fit the definition of a material term.

The Landlord also testified as to clutter on the property, additional vehicles on the property, the Tenant running a business on the property, and an RV parked on the property. However, I do not find documentary evidence before me to establish that the Landlord provided written notice regarding the issues and provided a reasonable timeframe in which to correct these issues. Instead, I find that the proper process for ending a tenancy due to a breach of a material term was not followed.

Therefore, I am not satisfied that the Landlord proved, on a balance of probabilities, that the tenancy was ended under Section 47(1)(h) of the *Act* due to a breach of a material term of the tenancy agreement.

Therefore, based on the above analysis, I find that the Landlord did not prove that he had cause for ending the tenancy due to the two reasons stated on the One Month Notice.

The One Month Notice, dated September 26, 2018, is hereby cancelled and of no force or effect. The tenancy continues until ended in accordance with the *Act.*

As the Tenant was successful in her Application, I award the recovery of the filing fee in the amount of $100.00. Pursuant to Section 72 of the *Act,* the Tenant may deduct $100.00 one time from the next monthly rent payment.

Conclusion

The One Month Notice, dated September 26, 2018, is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act.*

Pursuant to Section 72 of the *Act,* the Tenant may deduct $100.00 from the next monthly rent payment to recover the filing fee paid for the Application for Dispute Resolution.

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: November 14, 2018

Residential Tenancy Branch