Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREAT RADIANCE HOLDINGS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) and for authorization to recover the filing fee for this application from the landlord pursuant to section 72. At the hearing, the parties agreed to my proposal to amend the original application to the above issues, as the tenant had mistakenly referred to the landlord's 1 Month Notice as a 1 Month Notice for End of Employment.

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.

As the tenant confirmed that they were handed the 1 Month Notice by the landlord on February 25, 2019, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord's representatives confirmed that the tenant handed them a copy of the tenant's dispute resolution hearing package on March 1, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act.* Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*. I did not consider a very late written submission by the tenant's advocate, which was provided to the Residential Tenancy Branch (the RTB), the day before this hearing and was not provided to the landlord in advance of this hearing.

Issues(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?

Background and Evidence

This tenancy began as a one-year fixed term tenancy on April 1, 2012. At the expiration of the initial term, the tenancy converted to a month-to-month tenancy. Monthly rent at the beginning of this tenancy was set at $1,275.00, payable in advance on the first of each month. The current monthly rent is $1,469.96. The landlord continues to hold a $637.50 security deposit, paid when this tenancy began.

The landlord's 1 Month Notice

The parties entered into written evidence copies of the 1 Month Notice, requiring the tenant to end this tenancy by March 31, 2019, for the following reasons:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right 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.

At the hearing, the parties confirmed that the landlord had accepted a payment from the tenant for the month of April 2019, which enables the tenant to remain in occupancy of the rental unit until at least April 30, 2019.

The landlord entered into written evidence a copy of a November 3, 2016 warning letter that the tenant confirmed receiving. The parties agreed that the 2016 warning letter was sent in response to a dispute that the parties experienced on September 22, 2016, when the landlord's representative conducted an inspection of the tenant's rental unit. In that letter, the landlord advised the tenant that they considered the tenant's behaviour on September 22, 2016, very rude and alleged that the tenant tried to stop the landlord's

representative from entering the rental unit for the scheduled inspection. The landlord described this matter in the following terms in that letter:

...You also expressed your negative opinion regarding the building ownership in a very rude and inappropriate way. Please note that this behaviour will not be tolerated in the future...

The letter concluded by advising the tenant that any future breach of the terms of the tenancy agreement many result in immediate termination of their tenancy.

The tenant gave undisputed sworn testimony that there had been three or four inspections of their rental unit by the landlord's representatives since the November 2016 letter was issued. At the hearing, the parties confirmed that there had been no further incidents relating to scheduled inspections of the rental unit following the issuance of that letter.

At the hearing, I asked for clarification of the material term that the landlord claimed the tenant had breached and requested more information with respect to the written notice that was given to the tenant to correct that alleged breach. Landlord ZZ (the landlord) was unable to identify any example of a breach of a term that would constitute a material term of the tenancy agreement. The landlord confirmed that the only written warning provided to the tenant prior to the issuance of the 1 Month Notice was the November 2016 letter cited above, and which did not mention an alleged breach of a material term to this tenancy.

The landlord's 1 Month Notice resulted from the tenant's reaction to a bill that the landlord sent to the tenant for the repair of the tenant's front door, which had been damaged apparently by the wheelchair of the tenant's son. Both parties entered written and photographic evidence with respect to the damage to the door. I noted at the hearing that the issue of the landlord's repair of the door was not before me since the landlord has not filed any monetary claim against the tenant. Nevertheless, both parties entered into written evidence a copy of their interactions regarding this repair and photographic evidence.

The tenant maintained that other doors in the building need repair and claimed that they were the only person receiving notices to pay for the repair of their door. The tenant entered photographic evidence of their own door and other doors within the building. The tenant asserted that these doors were old and that the tenant's door resulted from reasonable wear and tear that would have occurred during the period of the tenancy

and over the years. At the hearing, the landlord confirmed that the door in question was the original door for this suite that was installed when the building was constructed in 1965.

The tenant testified that after receiving a January 30, 2019 invoice from the landlord requiring the payment of $105.00 to repair the door to the rental unit, the tenant attempted several times to speak with the landlord. The tenant was concerned because the tenant did not believe that they should be responsible for this repair, and furthermore, maintained that the door had not actually been repaired.

When the tenant was able to connect with the landlord, their telephone conversation on February 4, 2019 did not lead to satisfactory outcomes for either the tenant or the landlord.

In their written evidence and sworn testimony, the landlord maintained that the tenant had been threatening and aggressive during their telephone conversation. The landlord asserted that the tenant told the landlord that they would ruin the landlord's professional career as a property manager, and would go public with the tenant's efforts to cause serious problems for the building and the company that owned the building, alleging that he would make sure that his public campaign would dissuade people from wanting to live there. The landlord claimed that the tenant would seek out Go Fund me options to pay for lawyers and would use social media and the media as a forum for the tenant's claim that the landlord was treating the tenant unfairly. The landlord maintained that they told the tenant to calm down and that they would talk to the tenant directly and would put collection of the invoice on hold until they had a chance to discuss this at the tenant's rental unit.

The tenant admitted to having been very upset with the landlord during the telephone conversation. The tenant said that they expressed to the landlord that they viewed this as a means of bullying and intimidating the tenant, and that the tenant would not allow that to happen. Although the tenant confirmed that they advised the landlord that they intended to go public with this matter, they said that they did not swear at the landlord nor did they threaten the landlord with any physical violence. The tenant asserted that they were exercising their rights in alerting the landlord to the measures that they were prepared to take to address what the tenant viewed as unfair and arbitrary imposition of the repair bill on the tenant. The tenant said that they were upset that the work had not yet been done and that the landlord proposed coming to the tenant's rental unit to inspect the repair themselves and discuss this matter.

Although the parties agreed that arrangements were subsequently made whereby the landlord and the landlord's Building Manager AV attended the tenant's rental unit on February 21, 2019, the landlord agreed that no specific time was arranged when this meeting was to occur. The tenant said that they were notified that the landlord was willing to attend on the 20th but could not provide more details and the tenant said that they would be around the rental unit on February 21. The tenant said that they waited for quite awhile and were eventually notified by the Building Manager that the landlord was in transit and would be there in around 40 minutes. As the tenant had another appointment, the tenant decided to shower, but the landlord and the Building Manager arrived before the tenant was finished showering. As the tenant believed that this meeting was going to be limited to the landlord viewing the unrepaired door and confirming that the door had not been repaired, the tenant donned a t shirt and a towel to cover his lower body and meet with the landlord. In their written evidence and sworn testimony, the landlord maintained that the tenant's attire for this occasion was not suitable for a "business meeting" and noted that both the landlord and the Building Manager found it uncomfortable meeting with the tenant in that state of dress.

In their written evidence and sworn testimony, the landlord and the Building Manager asserted that the tenant's behaviours during their meeting of February 21, 2019 caused them concern about their safety. The landlord stated that the tenant was very angry and repeatedly entered the landlord's personal space. The landlord said that the tenant was red in the face and was so upset that the landlord was worried that the tenant was going to initiate a physical altercation with the landlord. The Building Manager testified that the tenant was so upset and aggressive that the Building Manager was considering calling her husband to join the meeting in order to ensure that the landlord's representatives were safe. Although there was no physical altercation, both the landlord and Building Manager maintained that they were very worried by the tenant's reaction to this matter. The landlord testified that they have been trying to avoid any contact with the tenant in the period following the February 21, 2019 meeting. The landlord said that they and those working for the landlord, including landlord representative TB, who also gave testimony at this hearing, believe that they should not be subjected to the verbal abuse and threats that they have received from the tenant. The landlord said that it has become very difficult for the landlord to perform their duties in this building, worrying about the tenant's reaction to any interaction that may occur with the landlord. The landlord said that the relationship is so broken that it has become very uncomfortable for any of the landlord's representatives to do their work in this building should the tenant remain a resident of this building.

The Building Manager testified that the landlord tried their best at the February 21, meeting to calm the tenant down, but the tenant continued to react in a very aggressive manner. The Building Manager said that during the meeting the tenant occasionally escalated his behaviours as he talked about previous interactions with the landlord's representatives about past repairs and items that were deficient..

Landlord Representative TB testified that they found dealings with the tenant "very scary" and finds interactions with the tenant upsetting to TB's system. TB confirmed that they too have had concerns about the tenant intruding into their personal space. TB described the tenant as hovering around them and making harassing remarks, even when the tenant was serving the landlord with documents at the counter in the landlord's office.

The tenant provided a different account of the February 21, 2019 meeting. The tenant said that instead of admitting that the door had not been repaired, the landlord maintained that it had been repaired and damaged again, and that the tenant would have to pay for another set of repairs to the door. The tenant testified no repairs had been undertaken, and that the landlord attempted again at the February 21 meeting to bully and intimidate the tenant into ending the tenancy so that the landlord could raise the monthly rent charged to new tenants. The tenant admitted that the meeting did not go well and that the tenant did inform the landlord of the steps the tenant was willing to take, which the tenant and the tenant's advocate asserted were well within their rights to undertake under these circumstances. Although the tenant admitted that they were "pretty upset", they maintained that they did not swear at the landlord nor did they threaten any physical violence of any type against the landlord or any of the landlord's representatives. While the tenant confirmed that they likely pointed to different features in the rental unit to reinforce the claim that the landlord had not been appropriate on previous occurrences when there had been differences of opinion regarding the stove, a sink, and the painting of a wall, the tenant testified that they did not invade the personal space of the landlord or the Building Manager at that meeting.

The tenant also gave a different version of their interaction with Landlord Representative TB, maintaining again that they had not invaded their personal space. The tenant said that they considered their relationship with the Building Manager as a positive one, and gave examples of reasonable and appropriate recent interactions the tenant had been involved in with both the Building Manager and Landlord Representative TB.

Analysis

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

The relevant sections of the *Act* for this hearing appear below:

> ***47*** *(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*
>
> > *(d) the tenant or a person permitted on the residential property by the tenant has*
> >
> > > *(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
> > >
> > > *(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, ...*
> >
> > *(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;...*

I will first deal with the landlord's assertion that there has been a breach of a material term of the tenancy agreement by the tenant.

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.
RTB 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…*

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.

In this case and as was noted at the hearing, I find that the landlord has failed to identify anything that would constitute a breach of a material term of the tenancy agreement as described in RTB Policy Guideline #8. The landlord's only written notice to the tenant prior to issuing the 1 Month Notice was in November 2016, over two years before the landlord maintained that there had been a breach of a material term of their tenancy agreement. Although the November 2016 warning letter did advise that any further breach of the terms of the tenancy agreement may result in termination of the tenancy, there was no statement that the issue the landlord considered the issue the landlord was raising at that time, whether the landlord could inspect the rental unit, to be a material term of the tenancy. More to the point, in this case, I find that the issue raised in that letter was whether the tenant had to allow the landlord's representatives to inspect the rental unit when requested. I find that this varied considerably from the allegations of significant interference with and unreasonable disturbance of the landlord's representatives, and issues of the personal safety of the landlord's representatives, that led to the issuance of the 1 Month Notice. In fact, I find there is undisputed sworn testimony from the parties that the tenant has allowed the landlord's representatives to conduct their inspections of the rental unit following receipt of the November 2016 letter, without further incidents regarding those inspections. For these reasons, I find no justification whatsoever for the landlord's entitlement to an Order of Possession based on the 1 Month Notice for an alleged breach of a material term of this tenancy which has gone unaddressed by the tenant after proper notification from the landlord.

Turning to the other reasons cited in the landlord's 1 Month Notice, I have received two very different accounts of the interactions between the tenant and the landlord on February 4, 2019 and February 21, 2019, the two incidents which have given rise to the landlord's initiation of proceedings to end this tenancy for cause. While it is possible to end a tenancy for cause without first giving a tenant a written warning to address the landlord's concerns, it is more typical that tenants are given such written warnings before a 1 Month Notice is issued. This puts the tenant on alert that further incidents of the type alleged could lead to an end to their tenancy. Based on the landlord having issued just such a warning letter in November 2016, it would seem that the landlord was well aware of this normal approach to interacting with tenants before a 1 Month Notice is issued.

There are also situations where a single incident can lead to the end of a tenancy, even without the issuance of 1 Month Notice, as section 56 of the *Act* enables a landlord to end a tenancy early if there is sufficient cause to do so. When allegations are made that a tenant's actions and behaviours have put the health and safety of a landlord or their representatives at risk, an arbitrator must carefully weigh the tenant's rights established under the *Act* and as set out in their tenancy agreement against the responsibility that a landlord has to protect their health and safety and that of their representatives.

I understand that the landlord and their representatives may feel that the behaviours exhibited by the tenant during the February 4, 2019 telephone conversation and the February 21, 2019 meeting were so extreme so as to warrant the ending of this tenancy for cause. I also understand that the statements made by the tenant during those heated conversations may have been viewed by the landlord and their representatives as an attempt to intimidate the landlord's representatives from carrying on their duties with respect to this tenancy and at this rental property. However, I also recognize that the tenant found the approach being taken by the landlord, especially with respect to repairs that the tenant believed had not even been undertaken, may also have been intimidating to the tenant. The fact that the door in question was an original door installed when this building was built in 1965 no doubt also exacerbated the tenant's anxiety with respect to the charge(s) the landlord was applying to the tenant.

Under these circumstances, there is little other than the sworn testimony of the parties to assess the extent to which the tenant's behaviours during the telephone conversation and the meeting were so extreme as to qualify as justification to end this tenancy for cause.

The tenant has asserted that the February 4, 2019 conversation between the landlord and tenant were not so disturbing to the landlord as to dissuade the landlord from agreeing to meet the tenant at the tenant's rental unit to attempt to resolve this matter. The landlord issued no 1 Month Notice to the tenant following the February 4, 2019 telephone conversation. As such, it appears to me that the sole reason for escalating this situation to the point where the landlord felt compelled to issue the 1 Month Notice rests with the incident of February 21, 2019, which followed from the unsatisfactory interaction on February 4, 2019.

Based on a balance of probabilities and after considering all of the sworn testimony and written evidence of the parties, I find that the landlord has not met the standard required to end this tenancy on the basis of the remaining two grounds identified in the landlord's 1 Month Notice. I do so as I find that the tenant was issued no warning letter regarding the behaviours that the landlord and their representatives found objectionable. The tenant's behaviours appear to have been relatively isolated incidents separated by over two years from a previous warning letter issued to the tenant for what I find to have been a substantively different matter. For these reasons, I allow the tenant's application and cancel the 1 Month Notice.

In coming to this determination, I want to alert the tenant that the landlord's issuance of the 1 Month Notice and the concerns raised by the landlord's representatives as outlined in this decision need to be taken as a reminder that the tenant needs to be respectful and appropriate in their interaction with the landlord's representatives. While the existing 1 Month Notice is set aside, this does not prevent the landlord from issuing a subsequent 1 Month Notice in the event that there are further incidents of a serious nature which could lead to the end of this tenancy for cause.

As a means of assisting the parties to understand the underlying issue of who is responsible for the repairs or replacement of the tenant's door, I referred the parties at the hearing to RTB Policy Guideline 40. This Policy Guideline outlines the Useful Life of various elements in a rental building. The useful life of a door in a rental building is estimated at 20 years, far less than the 54 years that this door has been in place.

As this tenancy is continuing, I am hopeful that the parties will be able to separate the issue as to whether the landlord is entitled to recover losses incurred in replacing or repairing the tenant's door from more general issues regarding conducting their business with one another in a respectful and appropriate manner in the future.

Since the tenant has been successful in this application, I allow the tenant to recover their $100.00 filing fee from the landlord.

Conclusion

I allow the tenant's application to set aside the 1 Month Notice. The 1 Month Notice is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenant a monetary award of $100.00 to recover the filing fee for this application. As this tenancy is continuing, I allow the tenant to reduce a future monthly rent payment by $100.00 to implement this decision.

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: April 11, 2019

Residential Tenancy Branch