Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOMERSET MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AAT CNC FFT LAT MNDCT

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;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- an order to allow the tenant to change the locks to the rental unit pursuant to section 70.

PB and JB represented the landlord in the hearing. 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.

Both parties were informed of Rule 6.10 as set out below:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing
Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

The landlord JB, was reminded at least twice during the hearing, at 11:17 a.m. and at 11:54 a.m, to comply with rule 6.10. and act in a respectful manner during the hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

The landlord testified that the 1 Month Notice, dated February 28, 2019, was served to the tenant by posting to the tenant's door on the same date. The tenant indicated during the hearing that there was no issue with the service of the 1 Month Notice. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the 1 Month Notice on March 3, 2019, 3 days after posting.

Preliminary Issue: Jurisdiction

Section 2 of the Act states the following:

2 (1) Despite any other enactment but subject to section 4 *[what this Act does not apply to]*, this Act applies to tenancy agreements, rental units and other residential property.

The tenant applied for monetary compensation related to damage to her car. The evidence of the landlord and the tenant is that the tenant's car was parked on the street, and not on the rental property. Although the dispute involves both parties, the dispute is unrelated to the tenancy agreement or rental unit.

Under these circumstances and based on the evidence before me, I find that the *Act* does not apply to tenant's monetary application. I therefore have no jurisdiction to render a decision in regards to the tenant's application for monetary compensation.

Issues 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 to allow the tenant to change the locks to the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began on April 1, 2018, with monthly rent set at $725.00. The landlord had collected a security deposit of $350.00 and pet damage deposit of $362.50 from the tenant, and still continues to hold both deposits.

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The landlord issued the 1 Month Notice on the following grounds :

1. 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 testified that the tenant continues to park in the visitor parking area despite several warnings not to do so. The landlord issued warnings letters to the tenant, which were included in their evidentiary materials. Additionally, the landlord testified that the tenant allows her dog to urinate and defecate on the property, and does not clean after her dog. The landlord's witness GC testified in the hearing that she lives on the ground floor, above the tenant, and has observed feces in the yard. GC testified that she "can't say for sure" which dog the feces is from, but she did observe the tenant there in the area several times a day.

The tenant disputes the claims by the landlord, and testified that 9 dogs live at the property, and there is no proof that the feces belongs to her dog. The tenant's witness GO testified in the hearing that he had observed the landlord being abusive towards the tenant, and prohibited her from parking in the parking lot.

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 tenant filed her application on March 12, 2019, 9 days after being deemed to have received the 1 Month Notice. As the tenant filed her application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy.

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

The landlord indicated on the 1 Month Notice that they wished to end the tenancy because of a "breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." 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…*

Although it was undisputed that the landlord did provide written warning to the tenant about her parking in the prohibited area, and her failure to clean up after her dog, the burden of proof is still on the landlord to demonstrate that they had met all the requirements above. I have reviewed the written warnings given to the tenant, and I am not satisfied that the landlord had clearly indicated the deadline by which the tenant must correct her behaviour. For this reason, I find that the landlord has not satisfied me that they have grounds for ending this tenancy on the grounds that were provided on the 1 Month Notice. Accordingly, I allow the tenant's application to cancel the 1 Month Notice, and this tenancy is to continue until ended in accordance with the *Act.*

I find that the tenant did not provide sufficient evidence to support why the locks should be changed, or why it was necessary to suspend or set conditions on the right of the landlord to enter the rental unit. Accordingly, I dismiss this portion of the tenant's application with leave to reapply.

I allow the tenant's application to recover the $100.00 filing fee from the landlord. The tenant may choose to give effect to this monetary award by reducing a future monthly rent payment by $100.00.

Conclusion

As I find that I have no jurisdiction to hear the matter about the damage to the tenant's car, I decline to give a decision about the tenant's monetary claim for compensation related to that matter.

The tenant's application to cancel the 1 Month Notice is allowed. The1 Month Notice, dated February 28, 2019, is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I issue a monetary award in the tenant's favour in the amount of $100.00. I allow the tenant to implement this monetary award of $100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of $100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: May 2, 2019

Residential Tenancy Branch