



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHARTWELL CONSTRUCTION
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC PSF OLC

Introduction

This hearing dealt with the tenants' 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;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;

EG and AK appeared on behalf of the landlord in this hearing, and had full authority to do so. 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.

The landlord's agents confirmed receipt of the tenants' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed.

The tenants confirmed receipt of the 1 Month Notice dated April 30, 2019. Accordingly, I find that the 1 Month Notice was served to the tenants in accordance with section 88 of the *Act*.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

Are the tenants entitled to an order to the landlord to provide services or facilities required by law?

Background and Evidence

This month-to-month tenancy began in November of 2010. Monthly rent is currently set at \$1,374.00 per month, payable on the first of each month. The landlord currently holds a security deposit of \$573.50. The tenants continue to reside in the rental suite.

The landlord issued a 1 Month Notice to End Tenancy on April 30, 2018, providing 2 grounds:

1. The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The landlord provided the following reasons for why they feel that it is necessary to end this tenancy on the grounds provided on the 1 Month Notice. AK, the resident manager, testified that the tenants had previously rented a parking spot, and cancelled this arrangement in 2014. Since the tenants had cancelled, AK testified that the tenants had requested to be allowed to use the parking area on a temporary basis. The landlord testified that the tenants would abuse their privilege by parking their vehicle overnight, and every day. In 2018 the tenants were asked to stop using the parking, but continued to park their vehicle there for hours.

In addition to the issues with parking, the tenants wanted to make their rent payments in cash despite the landlord's no cash policy. The landlord testified that this policy was in place to ensure the safety of the landlord and their staff, as accepting cash would require the staff to carry the cash to the bank. The landlord testified that they did accept cash payment on a few occasions, but did inform the tenants that this is not an accepted method of payment. The landlord provided a copy of the tenancy agreement in their evidence package. The tenancy agreement reads "For everyone's safety, The Company does not permit rent or anything else to be paid in cash". The landlord testified that they had sent several letters to the tenants about cash not being an

acceptable form of payment. The landlord included these letters in their evidentiary package.

The landlord feels that the above actions by the tenants have jeopardized the health and safety of the landlord and their staff, in addition to breaching a material term of the tenancy agreement.

While the tenants do not dispute the fact that they had attempted to make their rent payments in cash, the tenants feel that their actions do not justify the end of this tenancy on the basis of the 1 Month Notice. The tenants testified that the landlord had accepted cash payments for the last 9 years despite the policy, and the landlords have failed to support how the acceptance of cash payments has jeopardized the safety of the landlord and their staff.

Analysis

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

Section 46 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 filed their application on May 1, 2019, a day after they received the 1 Month Notice. As the tenants 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.

The landlord testified that by expecting the landlord and their staff to accept cash payments, the tenants have jeopardized the health and safety of the landlord and their staff. Although I understand the landlord's concerns that there are potential risks in handling and accepting cash, I am not satisfied that the landlord has provided sufficient evidence to support that the tenants' actions have seriously jeopardized the health and safety of the landlord, and especially not to the extent that justifies the termination of this tenancy.

The other reason provided on the 1 Month Notice for ending this tenancy is that the tenants have breached a material term of the tenancy agreement, and have not corrected this breach within a reasonable amount of time after being given 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...*

In regards to the landlord's allegation that there has been a breach of a material term of the tenancy agreement, the tenants dispute the materiality of the term that cash payments are not acceptable. It was undisputed by the tenants that they have paid rent in cash, nor do they dispute that they have requested this form of payment despite the clause in the tenancy agreement.

Based on the evidentiary materials as well as the testimony in the hearing, it appears that the landlord has experienced many issues dealing with the tenants during this tenancy, most of which pertains to the tenants' repeated requests for special consideration despite the terms of the tenancy agreement. The landlord advised that they would consider the tenants in breach of a material term of this tenancy agreement unless the tenants took the corrective action the landlord was requesting. Based on the

landlord's evidence and oral testimony, it seems that the landlord believes that the failure of the tenants to comply with a term of the tenancy agreement provides a basis for ending this tenancy. The mere inclusion of a clause in a tenancy agreement is not sufficient to establish that the term in question is truly a material term of that agreement.

After considering the written and oral evidence presented, I find that the landlord has not shown how the tenants' insistence on paying their rent with cash is a breach of a material term of the tenancy. I find that the landlord has failed to meet the high standard required to demonstrate that the clause in question was a material term of such importance that the landlord could end the tenancy on that basis.

For the reasons cited above, I find that the landlord has not met their burden of proof in establishing that they have cause to end this tenancy under section 47 of the *Act*, and accordingly I am allowing the tenants' application for cancellation of the 1 Month Notice dated April 30, 2019. The tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

Section 27 Terminating or restricting services or facilities, states as follows,

- 27** (1) A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
 - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
 - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

The tenants also made an application requesting that the landlord allow them access to use a parking spot in the underground parking for loading and unloading their belongings. The tenants also requested that the resident manager maintain regular office hours when he can be reached by the tenants. I am not satisfied that services or facilities requested are essential to the tenant's use of the rental unit, nor am I satisfied that the landlord has denied them these facilities are allowed under the tenancy

agreement and *Act*. Accordingly, I am dismissing this portion of the tenants' application without leave to reapply.

As the tenants were partially successful with their application, I allow the tenants' application to recover half of the \$100.00 filing fee from the landlord. The tenant may also choose to give effect to this monetary award by reducing a future monthly rent payment by \$.00.

Conclusion

I allow the tenants' application to cancel the 1 Month Notice dated April 30, 2019. The 1 Month Notice of is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenants' application for the landlord to provide services or facilities required by law is dismissed without leave to reapply.

I allow the tenants to recover half of the filing fee. I allow the tenants to implement a monetary award of \$50.00 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 tenants are provided with a Monetary Order in the amount of \$50.00, 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.

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: July 10, 2019

Residential Tenancy Branch