



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VICTORIA COOL AID SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC

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”).

Two agents for the Landlord (the “Landlord”) were present for the teleconference hearing and the Tenant joined 5 minutes after the start of the hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. However, they also stated that they received another package of evidence on the day of the hearing. The evidence that was provided to the Landlord on the day of the hearing was reviewed and it was confirmed that this was the same evidence submitted to the Residential Tenancy Branch on the day of the hearing. This included an approximately 70-page written submission which the Tenant stated was his detailed argument.

As stated by rule 3.14 of the *Residential Tenancy Branch Rules of Procedure*, the applicant’s evidence must be received by the Residential Tenancy Branch and the respondent not less than 14 days prior to the hearing. Therefore, the Tenant’s late evidence is not accepted and will not be considered as part of this decision. This decision will be based on the verbal testimony of both parties, as well as the documentary evidence of the Landlord and the evidence of the Tenant which was submitted and served within the required timeline.

All 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.

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?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement submitted into evidence. The tenancy began on September 4, 2018. Subsidized monthly rent is set at \$375.00, due on the first day of each month. No security deposit was paid.

The Landlord testified that on May 9, 2019 they served the Tenant with the One Month Notice by posting the notice on the Tenant's door. The One Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Further details were provided on the One Month Notice as follows:

Tenant has breached several material terms of his tenancy under Sections 1 & 11 by failing to provide current proof of his income (within the last three months) at the time he signed the Tenancy Agreement and at the Annual Review of Income, Assets and Family Composition which was effective April 1, 2019. The tenant has been asked several times to provide the information requirement but has not been forthcoming.

The Landlord provided testimony that sections 8, 10 and 11 of the tenancy agreement outline the requirement for the Tenant to provide proof of income to qualify for the rent subsidy. Section 8 of the tenancy agreement states that the Landlord is designated as housing for low and moderate income tenants.

Section 10 of the tenancy agreement states that if the tenancy is eligible for a rent subsidy, the tenant agrees to complete and sign a declaration regarding incomes and assets and provide proof of such. This section further states that "this information is material and fundamental to this tenancy agreement".

Section 11 of the tenancy agreement states that if a tenant is eligible for a rent subsidy, the tenant agrees to provide documentation as requested by the Landlord. Section 11(c) of the tenancy agreement states that failure to disclose information as requested by the landlord is considered a breach of the agreement and the tenancy agreement may be ended.

The Landlord stated that a tenant is to provide the income information at the start of the tenancy as well as when required throughout the tenancy to ensure the information is up to date. They stated that the Tenant previously resided in another rental unit on the residential property and

was asked to submit income information at that time. They stated that he has been asked a total of three times, including at the start of the initial tenancy, at the start of the tenancy in the current rental unit and in March 2019 as part of the annual review. The Landlord stated that the Tenant has proceeded with the subsidy housing application, but has not provided proof of income such as bank statements that would verify ministry direct deposits.

The Landlord noted that proof of income is required to reside in the residential property as they have a maximum income cut-off as well that cannot be verified without proof of income.

The Landlord submitted into evidence a letter to the Tenant dated March 28, 2019. In the letter, the Tenant is informed that as he failed to provide proof of income he is no longer eligible for a rent subsidy and as a result rent will now be \$445.00 per month. The letter also notes that the Tenant is in breach of Section 8, 10 and 11 of the tenancy agreement and will remain in breach until the required documents are submitted.

The Landlord submitted into evidence a letter to the Tenant dated May 9, 2019. In the letter the Tenant is informed that as he did not submit the required income information, effective April 1, 2019 the monthly rent will be \$445.00, which is the non-subsidized amount. In the letter the Landlord states that the additional amount of rent is due by May 15, 2019 or a 10 Day Notice to End Tenancy for Unpaid Rent may be served.

The Tenant testified as to his position that it is unlawful to ask for bank statements and noted that Section 8 of the tenancy agreement does not require bank statements to be submitted. He further stated his belief that this request is contrary to the Charter of Rights and Freedoms as he should be presumed innocent when reporting his income and not be required to submit proof. He also noted that his rights under the Charter override the tenancy agreement. The Tenant stated that there is no requirement for bank statements to be submitted and instead, that this is a personal preference of the agent for the Landlord.

The Tenant stated that he did not provide income verification when he moved in and that this is the third time it has been requested from him. He stated that he took the May 9, 2019 letter from the Landlord to be a threat and noted his position that the Landlord's request has no basis in law. The Tenant confirmed receipt of the Landlord's letters requesting that proof of income information be provided.

Analysis

The parties agreed that the Tenant was served with a One Month Notice on May 9, 2019 pursuant to Section 47 of the *Act*. As stated in Section 47(4) of the *Act*, a tenant has 10 days in which to dispute a One Month Notice. In the absence of information that would confirm the date the notice was actually received by the Tenant, I refer to the deeming provisions of Section 90

of the *Act* which state that service on the door is deemed served 3 days later. As such, I find that the One Month Notice is deemed served on May 12, 2019. As the Tenant filed the Application for Dispute Resolution on May 21, 2019, I find that he applied within the time allowable under the *Act*. Therefore, the matter before me is whether the One Month Notice is valid.

As stated by rule 6.6 of the *Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid. Therefore, in this matter, the Landlord has the burden of proof.

I accept the testimony of both parties and find that the Landlord has repeatedly asked the Tenant to provide documents to verify his income and that the Tenant has not done so. However, as the One Month Notice states that the tenancy was ended as the Tenant was in breach of a material term of the tenancy agreement, I find it relevant to refer to the definition of a material term as provided in *Residential Tenancy Policy Guideline 8*. This policy guideline states the following regarding material terms:

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.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive

While the tenancy agreement notes that tenants are required to provide income verification when requested and that this is a material term of the tenancy agreement, I am not satisfied that the One Month Notice was the proper process for ending the tenancy or that the issue is related to a material term of the tenancy.

I note that the Landlord provided testimony that they have requested proof of income documents three times and that the Tenant has not provided the requested documents at any point. Therefore, I find that these documents were requested at the start of the initial tenancy in another rental unit and the start of the tenancy in September 2018 and not provided.

As such, the tenancy agreement was entered into without the requested documents which leads me to find that this may not be a material term of the tenancy agreement such that even a trivial breach would end the tenancy. Should the requested proof of income documents be a material term, I find it unlikely that the tenancy agreement would have been signed and entered into without the documents.

I also find that the proper process for ending a tenancy for a breach of a material term of a tenancy was not followed. As stated in policy guideline 8, the process is as follows:

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.*

In the letter dated March 28, 2019 the Tenant was informed of the non-subsidized rent amount and informed that he is in breach of the tenancy agreement. However, I do not find that this letter provides a deadline or states that the tenancy will end if the deadline is not met. In the letter dated May 9, 2019, the Tenant is again informed that he no longer qualifies for the rent subsidy and notes that failure to pay the outstanding rent will result in the tenancy ending through service of a 10 Day Notice to End Tenancy for Unpaid Rent. I do not find this to address a breach of a material term or note that the tenancy may end due to that breach. Instead, the letter notes that the tenancy may end due to non-payment of rent.

In support of my finding that this is not a material term of the tenancy agreement, I note that the *Act* provides a separate notice for ending a tenancy if the tenant ceases to qualify for the rental unit under Section 49.1 of the *Act*. Not qualifying for subsidized housing may include failure to provide the required documentation to obtain approval. Therefore, I find that the Landlord has a remedy under the *Act* to end the tenancy should the Tenant no longer qualify for the rental unit through service of a Two Month Notice.

While I accept the evidence of the Landlord that the Tenant has not provided proof of income documents as required to receive subsidized housing or to continue residing in the residential property, I am not satisfied that this is a breach of a material term of the tenancy. Instead I find that the Landlord may have cause to end the tenancy under Section 49.1 of the *Act*.

Accordingly, I find that the reasons for the One Month Notice are not valid and the Tenant's application to cancel the notice is successful. The One Month Notice dated May 5, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Conclusion

The One Month Notice dated May 9, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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 09, 2019

Residential Tenancy Branch