Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LAT, LRE, OLC, PSF, RP, RR, FFT

Introduction

This hearing involved cross applications made by the Tenant. On May 30, 2019, the Tenant applied for a Dispute Resolution proceeding seeking authorization to change the locks pursuant to Section 31 of the *Residential Tenancy Act* (the "*Act*"), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 of the *Act*, seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, seeking an Order for the Landlord to provide services or facilities pursuant to Section 62 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On May 30, 2019, the Tenant made a second Application for a Dispute Resolution proceeding seeking authorization to change the locks pursuant to Section 31 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On June 7, 2019, the Tenant amended her first Application for Dispute Resolution seeking to remove her request for a repair Order, seeking to remove her request for a Monetary Order, and seeking to remove her request that the Landlord provide services or facilities.

On June 20, 2019, the Tenant amended her second Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Act*.

The Tenant attended the hearing and Y.N. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that she served the first Notice of Hearing package and first Amendment to the Landlord by registered mail on June 6, 2019 and Y.N. confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served the first Notice of Hearing package and first Amendment.

The Tenant advised that she served the second Notice of Hearing package and second Amendment to the Landlord by registered mail on June 20, 2019 and Y.N. confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served the second Notice of Hearing package and second Amendment.

The Tenant advised that she served her evidence to the Landlord by hand on July 3, 2019. Y.N. confirmed that he received this package, that he had read it, and that he was prepared to respond to it. Based on this testimony, I am satisfied that the Landlord has been served the Tenant's evidence. As such, I have accepted this evidence and will consider it when rendering this decision.

Y.N. advised that he served the Tenant his evidence by posting it on the Tenant's door on July 8, 2019. The Tenant confirmed that she received this package, that she had read it, and that she was prepared to respond to it. Based on this testimony, I am satisfied that the Tenant has been served the Landlord's evidence. As such, I have accepted this evidence and will consider it when rendering this decision.

The Tenant advised that she served late evidence to the Landlord by posting it to the Landlord's door on July 17, 2019. As this evidence was late and did not comply with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Landlord's Notice, and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fees?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on October 1, 2011 and that rent is currently established at $1,476.00 per month, due on the first day of each month. A security deposit of $720.00 was also paid.

Y.N. stated that the Notice was served to the Tenant by posting it on her door on June 8, 2019. The reason the Landlord served the Notice is 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.” The Notice indicated that the effective end date is August 1, 2019.

The Tenant agreed that she received the Notice; however, she was not sure when she received it.

Y.N. submitted that the Landlord provided three written notices to the Tenant, since May 2019, to enter the rental but the Tenant has refused entry each time. He advised that he would often knock and there would be no response, but after he would enter, the Tenant

would become verbally abusive and prevent him from entering the rental unit. Sometimes, despite giving the proper written notice for entry, the Tenant would email advising the Landlord that the times were not convenient for her. He submitted letters from other parties and other documentary evidence to support his position that the Tenant has been refusing entry to the rental unit. He stated that the Landlord was discouraged from entering the rental unit after serving the proper written notice on other occasions before May 2019 as well.

When Y.N. was asked to explain how this was a material term of the tenancy that was breached, he stated that he did not know what a material term was. However, he indicated that the addendum to the tenancy agreement specifically states that the "Tenants are to allow inspection of inside of home as and when necessary and showing to potential new tenant, if necessitated, with a 12 hr. notice to the tenant. One inspection each month shall be additionally allowed."

When he was questioned if the Tenant was provided written notice to correct the alleged breaches of a material term of the tenancy, Y.N. referenced emails to the Tenant asking that she allow for entry into the rental unit.

The Tenant advised that she was never given any written notice advising her that she has breached a material term of the tenancy. As well, she stated that it was her belief that she had cause not to allow the Landlord to enter the rental unit. With respect to the December notice, she stated that it was around Christmas and she had company over, but the Landlord entered despite this. With respect to the other entries, she acknowledged that she received notices for entry, but it is her position that the Landlord does not wait the appropriate amount of time pursuant to the *Act* to enter. She also acknowledged that she had been uncooperative with allowing access to the Landlord for entry into the rental unit, mostly because it is inconvenient for her and does not work with her schedule.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.
In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

According to Section 47(4) of the *Act*, the Tenant has 10 days to dispute this Notice, and Section 47(5) of the *Act* states that "*If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date."* I find it important to note that this information is provided on the second page of the Notice as well.

The undisputed evidence before me is that the Notice was posted on the door on June 8, 2019. As the Tenant was not sure what day she received the Notice, Section 88 of the *Act* states that it would then be deemed received three days after posting. As the Tenant made this Application by June 20, 2019, I am satisfied that the Tenant disputed the Notice within the required timeframe.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reason cited in the Notice is valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

> ***47*** *(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*
>
> > *(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;*

Furthermore, Policy Guideline # 8 outlines a material term as follows:

> "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. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material."

When examining the evidence before me, while it is Y.H.'s position that his submissions on the Tenant's actions would constitute a breach of a material term of the tenancy agreement, I find it important to note that he was unaware of what a material term was before he served the Notice indicating that a material term of the tenancy was breached. As such, this causes me to doubt the credibility of his testimony that he knew what a material term was before he checked off that particular reason on the Notice or that he understood the Tenant's actions to be a breach of that material term. As a result, I am further doubtful that he would have ever then served the Tenant with a written notice informing her that she had breached a material term of the tenancy or subsequently given her a reasonable period of time to correct this.

Moreover, the Policy Guideline states that "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." Given that the most trivial breach of a material term would warrant an end to the tenancy, I do not find that it makes sense then that if the Landlord believed that the Tenant's actions were truly a breach of a material term of the tenancy, that the Notice would be served after multiple "breaches".

As an aside, I also find it important to note that the term in the tenancy agreement, with respect to access of the rental unit, that he considers to be a material term is already a provision within the *Act* that allows a Landlord to enter a rental unit. It was pointed out to him that any terms in a tenancy agreement that contravene the *Act*, such as being able to enter with 12 hours of notice, will be unenforceable.

Finally, I do not find that this term in the tenancy agreement is clearly stated to be a material term of the tenancy.

When reviewing the totality of the evidence before me, I am not satisfied that Y.N. has substantiated that what he is relying on as a material term of the tenancy would meet the definition of a material term. In addition then, I do not find that the Landlord has thus given a written letter to the Tenant advising her that she has breached a material term of the tenancy. As such, I am not satisfied that the Tenant's actions would constitute a

breach of a material term of the tenancy nor would they be justification to warrant the Notice being issued under this reason.

As such, I am not satisfied that the Landlord has properly substantiated the ground for ending the tenancy. Therefore, I am not satisfied of the validity of the Notice. Ultimately, I find that the Notice is of no force and effect.

As the Tenant was unsuccessful on her first application, I decline to award recovery of the filing fee for this Application.

As the Tenant was successful in her claim on the second Application, I find that the Tenant is entitled to recover the $100.00 filing fee paid for this Application and may withhold this from the next month's rent.

Conclusion

I dismiss the Tenant's first Application for Dispute Resolution with leave to reapply.

As well, based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of June 8, 2019 to be cancelled and of no force or effect.

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 22, 2019

Residential Tenancy Branch