Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Penako Holdings Ltd.
and [tenant name suppressed to protect privacy

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was set to deal with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), among several other issues. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed that the parties had exchanged their respective hearing documents and evidence upon each other and I admitted their evidence without any objection from the parties.

The tenant had a witness present at the commencement of the hearing. His witness was excluded with instruction to wait to be called to testify. The tenant's witness was not called to testify.

I noted that the tenant had identified multiple issues on his Application for Dispute Resolution. Rules 2.3 and 6.2 of the Rules of Procedure provide for circumstances where an applicant raises multiple issues on a single application.

> **2.3 Related issues**
> Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.
>
> **6.2 What will be considered at a dispute resolution hearing**
> The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

The parties confirmed that the tenant continues to occupy the rental unit and the tenant seeks to continue the tenancy and the landlord seeks to end it. As such, I determined the primary issue to resolve by way of this proceeding is whether the 1 Month Notice should be upheld or cancelled. I severed the other remedies sought by the tenant with leave to reapply pursuant to the authority afforded me under Rule 2.3 and 6.2 of the Rules of Procedure.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause served on June 28, 2019 be upheld or cancelled?

Background and Evidence

The landlord's agent testified that an oral tenancy agreement was entered into between the tenant and the former building manager, who the tenant's father, in approximately October 2007. The current building manager took over management of the building in the fall of 2018. I heard that the rent was initially $805.00 payable on the first day of every month and that over the years it has increased with the most recent rent increase taking effect on December 1, 2018. The landlord's agent testified that starting December 1, 2018 the rent was set at $1,005.00; however, the landlord has been accepting $1,000.00 in satisfaction of the monthly rent.

On June 28, 2019 the landlord posted the subject 1 Month Notice to End Tenancy for Cause ("1 Month Notice") on the door of the rental unit with a stated effective date of August 1, 2019. The tenant filed to dispute the 1 Month Notice within the time limit for doing so.

The landlord checked the following boxes on the second page of the 1 Month Notice as being the basis for ending the tenancy:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has
    - Put the landlord's property at significant risk
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
    - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant
- Security or pet damage deposit was not paid within 30 days as required under the tenancy agreement

In the area provided on the 1 Month Notice to describe the details of cause, the landlord wrote:

> "May 31, 2019 entered site [unit number of rental unit] fire hazard – hoarder to the bldg [address of building]. All ways late paying rent. Pets which is not allowed without permission. 5 uninsured vehicles which is not allowed. Gives key to his friends which is not allowed."
>
> [Reproduced as written except to remove address of rental unit and building address]

Below, I have summarized the parties' respective positions with respect to each of the four reasons identified on the 1 Month Notice:

Repeated late payment of rent

In the details of cause provided on the 1 Month Notice, the landlord did not specify the months that were late or when the payments were received. Based on the written statement is asked the landlord to confirm that every rent payment has been late. The building manager initially indicated that every rent payment has been late, although he subsequently acknowledged that there was a recent month when it was paid early and other months the landlord was unable to determine when the rent was paid based on the evidence the landlord had before them for the hearing.

Since the landlord's details of cause with respect to late payment appeared to be a vague generalization, I asked the landlord to provide exact dates of when rent was paid late for recent months. The landlord was unable to do so with the exception of March 2019 when rent was paid on March 15, 2019.

I informed the landlord that the landlord would need to demonstrate the dates the tenant paid rent late at least three times in order to prove the tenancy should ended for repeated late payment of rent. The landlord's agent indicated other issues were of greater concern and that

the landlord wanted to move on to the other issues without pursuing repeated late payment of rent further.

Much later in the hearing, the building manager's assistant indicated that she wanted to re-visit the repeated late payment of rent issue and stated that she located a bank draft for the tenant's June 2019 rent payment. The manager's assistant stated that June's rent was paid late and when I asked the landlord which date the rent was received the landlords were able to say except that it was late.

During the hearing, I informed the parties that I found the landlord failed to provide me with sufficient particulars to conclude the tenant has been repeatedly late paying rent. As such, I did not require a response from the tenant. However, I did note that in the tenant's written submission the tenant took the position that it is up to the landlord to come get the rent from him and that the landlord may choose to come collect it after the first of the month in an attempt to find a reason to evict him. I explored this issue further with a view to avoiding future disputes concerning late payment of rent and I determined the following:

The tenant had ordinarily paid rent in cash and cash is not permitted in the landlord's drop box located at the residential property and since a receipt must be given when cash is used to pay rent, this necessitated the manager and the tenant to meet in person, which proved inconvenient and frustrating since there was no set time to meet and the manager would attend the tenant's unit multiple times in attempt to retrieve the cash payment. The landlord collects rent from its other tenants and has a preference to receive rent either by etransfer or cheque which may be deposited in the landlord's drop box. The tenant stated he preferred to pay by etransfer but claims he did not have the information to do so. The landlord's agent provided the landlord's email address that is to be used to send etransfer payments during the hearing and I have recorded it on the cover page of this decision.

Significant risk to the landlord's property
The landlord identified three issues under this reason:

1. Tenant has given keys to others

It was undisputed that in September 2018 the keys to the building's entry door(s) and laundry room were changed and the tenant was provided two keys.
The manager suspects the tenant has either copied the keys, even though the keys state that they are not to be copied, and/or given his keys to others because the landlord has seen the tenant's acquaintances and father in the building while the tenant has been away.

The landlord took particular issue with the tenant's father being in the building without the tenant because the tenant's father is the former building manager and the manager indicated the tenant's father had acted inappropriate while he was the manager and other tenants in the building are fearful of the tenant's father.

The landlord indicated that they have a basis to legally ban the tenant's father from the building due to his actions in the past but that they had not done so and had been agreeable to allowing him in the building to visit the tenant to enable the tenant to enjoy a father/son relationship; however, the landlord does not want the tenant's father in the building without the tenant.

The tenant testified that he has not copied the keys that were given to him in September 2018. The tenant acknowledged that he has two keys and that he has given a key to a friend, his girlfriend, and his father at times. The tenant stated that he gave a key to a friend so that person could pay his rent and/or feed his bird when he has been out of town. The tenant stated that he has given a key to his father to feed his bird when he is out of town. The tenant stated that he has also given a key to his girlfriend so that they may meet in the rental unit. The tenant stated that doing so is not prohibited under the Act.

With respect to giving a key to his father, the tenant stated that he understood the landlord was not pleased with his father coming into the building due to disputes concerning his actions while he was the manager, including allegations concerning missing money; but, he did not have knowledge of other allegations the landlord was implying during the hearing. The tenant stated that he would give his father a key to feed his bird only when it was a matter of being a last resort and that the last time his father took the bird to his house to look after.

2. Fire hazard

The landlord submitted that the tenant has so many possessions in the rental unit that he has created a fire hazard. The building manager testified that he entered the rental unit on May 31, 2019 after posting a notice of entry on May 30, 2019 and found the tenant had his belongings stacked to the ceiling. The landlord provided photographs of the unit that were taken on May 31, 2019.

The landlord did not give the tenant any notice to clean up or reduce the amount of possessions he has in the unit and did not re-inspect the unit after May 31, 2019. Rather, the landlord decided to issue the 1 Month Notice.

The tenant was of the positon that the manner in which he keeps his belongings in the rental unit are not a fire hazard. The tenant acknowledged that the landlord's photographs depict a messy and cluttered unit but denied it demonstrates he is a hoarder or there is a fire hazard. The tenant submitted that he uses the items seen in the photographs but acknowledged that he has stored items to the ceiling in one corner of the rental unit. The tenant also pointed to the landlord's photographs that he submits are of poor quality but do not depict a hoarding situation or a fire hazard.

3. Lack of insurance on multiple vehicles

The landlord submitted that the tenant has five motorized scooters parked on the property and they do not have insurance. The landlord is concerned that if the vehicle(s) were to catch fire, for instance, there would not be insurance coverage for the damage caused.

The tenant acknowledged that he has five motorized vehicles on the property. The tenant testified that he had a combination of storage insurance and road insurance on all five of them at one time; however, the storage insurance policies expired in May 2019. The tenant explained that he did not renew the storage policies because the building manager demanded that he have road insurance on all of them and he found that requirement unreasonable since he does not drive all of them. As such, the tenant did not want to spend money on storage insurance if the landlord was not going to be satisfied with storage insurance. The tenant was of the position that the scooters are no more at risk of catching fire than any other vehicle.

The manager acknowledged that when the he instructed the tenant to get insurance on the scooters he demanded the tenant get sufficient insurance coverage so that the vehicles may be driven on the street but the tenant was not agreeable to obtaining such insurance coverage.

Illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant

The landlord submitted that it is the tenant's father that had engaged in illegal activity in the past and that they did not specify the nature of the illegal activity on the 1 Month Notice to be discreet.

During the hearing, I informed the parties that the tenant has the right to be notified of the reasons the landlord seeks to end his tenancy so that he may respond to the allegation, which is the purpose of providing the "details of cause" on the 1 Month Notice, and that I find the lack of details with respect to this reason to be prejudicial and that I would not consider this reason further. The landlord withdrew this reason for ending the tenancy at this point and it was unnecessary to seek a response from the tenant.

Failure to pay security deposit and/or pet damage deposit

The landlord testified that the tenant did pay a security deposit and that this reason was ticked on the 1 Month Notice was to indicate the tenant has not paid a pet damage deposit.

The manager stated that it was discovered that the tenant had a pet when the unit was inspected on May 31, 2019. The landlord was of the position the tenant was not permitted to have pets without permission and acknowledged that a pet damage deposit was not requested of the tenant.

I informed the parties during the hearing that the landlord may not end the tenancy for failure to pay a pet damage deposit unless the landlord established that a pet damage deposit was required. A pet damage deposit may be required when the tenancy agreement is entered into or during the tenancy when the landlord has agreed the tenant kay keep a pet. As such, I did not consider this stated reason to be a basis for ending the tenancy and I did not seek a response from the tenant.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice.

Upon consideration of everything before me, I provide the following findings and reasons.

Repeated late payment of rent

Where a landlord alleges the tenant is repeatedly late paying rent, the landlord bears the burden to prove the tenant has been late at least three times, as provided under Residential Tenancy Policy Guideline 38.

I find it reasonable to expect that where a landlord alleges repeated late payment of rent, the landlord is prepared to provide the date the rent was received for months the landlord asserts the payment was late. This information should be included in the "details of cause" section of the 1 Month Notice so that the tenant is put on notice as to which months he must be prepared to respond to. This is in keeping with the principles of natural justice. Instead, the landlord made a general statement that the tenant is "always late" paying rent but that turned out to be an inaccurate statement since it was acknowledged that rent for April 2019 was paid two weeks early.

During the hearing, the landlord asserted the tenant was late paying rent for June 2019 but did not know the date the rent was received and the landlord did not have specific dates for other months. I find it is not enough to merely state the tenant was late as this is a conclusion on part of the landlord and I require the specific details in order to reach the same conclusion.

In light of the above, I find the landlord did not meet its burden of proof to end the tenancy for repeated late payment of rent and I do not end the tenancy for this reason.

Nevertheless, it was apparent to me from submissions of both parties, that the parties have experienced frustration in paying/receiving rent in cash and giving/obtaining a receipt in person since there is no agreed upon time to meet to make the exchange. Both parties indicated a preference to pay the rent by etransfer or by cheque. Therefore, by the authority afforded me under section 62 of the Act, I order the following:

> **From this date forward, the tenant must pay rent to the landlord on or before the first day of every month by way e-transfer using the email address provided by the landlord or by cheque by depositing the cheque in the appropriate receptacle/drop-box/mailbox allocated for receiving cheques.**

As a caution to the tenant, the Act provides that documents placed in a mailbox are deemed to be received three days after the document is placed in the mailbox and five days after mailing.

As such, if the tenant choses to pay rent by cheque, the tenant would be well served to place a cheque in the landlord's mailbox at least three days before the first day of the month.

Significant risk to landlord's property

1. Keys

There is nothing in the Act that specifically prohibits a tenant from giving their key to a friend or family member to enable that person to access the rental unit. However, section 30 of the Act provides that:

> **30** (1) A landlord must not unreasonably restrict access to residential property by
>
> (a) the tenant of a rental unit that is part of the residential property, or
>
> (b) a person permitted on the residential property by that tenant

[Reproduced as written with my emphasis underlined]

Since section 30 includes the word "unreasonably", and meaning must be given to all words used in interpreting statutes, I find the Act contemplates that there are circumstances when a landlord may restrict access to a person permitted on the property by the tenant. I am of the view that if the tenant has permitted someone on the property to do lawful things such as meet him in the rental unit, pay his rent or feed his bird while he is away, the landlord may not restrict such activities unless it is reasonable to do in the circumstances. The landlord appears to have taken particular issue with the tenant's father accessing the residential property while the tenant is not there and indicated that other tenants are fearful of the tenant's father. However, the landlord acknowledged that it had not divulged such information to the tenant and I am of the view that it is unfair to keep the information from the tenant but then try to evict him for allowing his father to access to the building. Also, the landlord indicated that they were willing the tenant to have his father visit so that the father and the tenant may have a relationship. In light of these circumstances, I am of the view it was not reasonably foreseeable by the tenant that he could not give his father a key when his bird needed to be cared for. Therefore, I decline to uphold the eviction notice under this ground.

With a view to avoiding a future dispute concerning the tenant's father entering the building, I encourage the landlord to explain the situation to the tenant so that the tenant may make an informed decision. Having heard from the landlord that the landlord has cause to "trespass" the tenant's father from the property but has chosen not to so as to permit a relationship between the tenant and his father, I suggest to the tenant that it may be wise to refrain from giving his father a key to the building to avoid the landlord from barring his father from the property all together.

2. Fire hazard

Section 32 of the Act provides that a tenant must maintain a rental unit as follows:

> (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

In addition to maintaining the rental unit in accordance with section 32(2), a tenant must not put the residential property at significant risk as this is a basis for eviction under section 47 of the Act. Putting a property at significant risk may include hoarding too many possessions in a rental unit or unsafely storing items close to sources of ignition (heaters, stove, oven, fireplace or the like).

The parties were in dispute as to whether the tenant has been hoarding too many possessions in the rental unit and creating a fire hazard. Both parties provided me with photographs.

It would appear to me that the landlord's photographs were taken when the landlord inspected the unit on May 31, 2019. The tenant's photographs appear to be taken at a different time since the unit appears more tidy and organized.

The landlord's photographs are not of high quality and appear rather grainy and fuzzy. Nevertheless, it is possible to make out that there are unclean and cluttered areas and numerous possessions in the unit. The landlord has alleged the tenant is a "hoarder". There are various degrees of "hoarding" and I find it reasonable to expect that in order to end the tenancy for "hoarding" the landlord must demonstrate the tenant has or is likely to seriously jeopardize the health or safety of other occupants or the landlord or has put the landlod's property at significant risk. I am unable to determine from the photographs whether the tenant has been stacking items in front of heaters or other sources of ignition. It also appears that there is room to walk around the unit, although rather congested, but I am unable to conclude that one's egress would be impeded by the volume of possessions. However, I do see an area where the tenant has stacked several items very high and this may represent a falling hazard.

In light of the above, I find the evidence does not satisfy me that the condition of the unit is so unsafe that it warrants an end of tenancy at this point; however, with a view to ensuring safety of the tenant and other occupants of the building and the landlord, and to ensure the tenant does not cause damage to the property I order the following:

> **EFFECTIVE IMMEDIATELY UPON RECEIPT OF THIS DECISION, the tenant must ensure that he complies with section 32(2) of the Act. The tenant must also ensure that his possessions do not impede egress from the unit and that items stacked are not at risk of falling over and harming someone or the property.**

The landlord is authorized and permitted to inspect the rental unit once to per month to ensure the tenant is in compliance with this order. The inspection must be accomplished in accordance with a written notice of entry that complies with section 29(1)(b) of the Act.

Section 29(1)(b) of the Act provides:

> **29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
>
> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
>
> (i) the purpose for entering, which must be reasonable;
>
> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

As provided in section 90 of the Act, if the landlord posts the 24 hour notice on the door of the rental unit it is deemed received three days later and if it is mailed to the tenant it is deemed received five days later. Accordingly, the date of entry must allow sufficient time for the tenant to receive the notice.

3. Uninsured vehicles

There is nothing specific in the Act with respect a tenant's obligation to obtaining insurance and there is insufficient evidence that the tenancy agreement entered into by the tenant provided for an obligation to carry insurance. However, the tenant's vehicles are stored on common property and the landlord has a right and obligation to manage common property so that its use by other occupants is protected and the property is protected from harm. Under section 28 of the Act, every tenant has the right to "use of common areas for reasonable and lawful purposes".

In this case, the landlord demanded the tenant carry road insurance on all of his vehicles stored on the common property. The tenant had carried storage insurance on the vehicles he did not drive on the road but those policies expired in May 2019. According to the tenant, he did not renew the storage policies because the landlord did not find such coverage sufficient and according to the manager he did require the tenant to carry road insurance on all of the scooters.

Upon review of the storage insurance policies the tenant did have, I am satisfied that the policies included carried third party liability coverage and comprehensive coverage (fire, theft, vandalism). I find that carrying storage insurance on vehicles not driven on the street is sufficient to mitigate potential risk to the landlord's property and I am of the view that the landlord's demand for the tenant to carry road insurance on vehicles not driven on the road to be unreasonable. Therefore, I do not end the tenancy for this reason as I find the landlord's unreasonable demands have contributed to this issue and I issue the following order to the tenant:

> **Within one week (7 days) of receiving this decision the tenant must have a minimum of storage insurance on all of his motorized vehicles, including motorized scooters. The tenant is further obligated to provide the landlord with proof of insurance if requested by the landlord.**

Failure to pay pet damage deposit

The landlord's submissions, as indicated on the 1 Month Notice, concerning pets and a requirement to pay a pet damage deposit were inconsistent. A landlord cannot take the position that the tenant is not permitted to have pets and then try to end the tenancy for failure to pay a pet damage deposit.

Section 20(c) of the Act provides for the only times when a landlord may require a pet damage from the tenant. Section 20(c) provides as follows:

> **20** A landlord must not do any of the following:
>
> (c) require a pet damage deposit at any time other than
>
> (i)when the landlord and tenant enter into the tenancy agreement, or
>
> (ii)if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;
>
> [My emphasis underlined]

If the landlord seeks a pet damage deposit from the tenant, the landlord must agree that the tenant may keep the pet. In this case, the landlord has not indicated that the tenant may keep the pet, therefore, the requirement for the tenant to pay a pet damage deposit is premature and the tenancy cannot be ended at this time for failure to pay a pet damage deposit.

Other issues

Based on the "details of cause" provided on the 1 Month Notice and the submissions of the building manager during the hearing, it was apparent to me that the manager seeks to have the tenant comply with "rules" or terms in tenancy agreements he entered into with other tenants in the building. Each tenancy agreement is unique and the tenant remains obligated to comply with the terms agreed upon when his tenancy formed which may very well be different than terms in other tenancy agreements. Since the tenancy agreement was oral and entered into before the current manager took over management of the building, I appreciate the manager may not have knowledge of all terms that were agreed upon when the tenancy started. However, that is not a basis for the tenant to do whatever he pleases, as the manager suggested. The tenant remains obligated to comply with the Act, including the orders I have issued with this decision.

Also for consideration is that section 13 of the Act provides that every tenancy agreement has 'standard terms'. Both parties are bound by the "standard terms". The standard terms are found in the Schedule of the Residential Tenancy Regulations. The Residential Tenancy

Regulations, including the Schedule, may be found on the Residential Tenancy Branch under "Calculators & Resources" or by accessing the regulations directly at the following site: http://www.bclaws.ca/Recon/document/ID/freeside/10_477_2003

Summary

Upon consideration of all of the above, I find the landlord has not sufficiently proven that the tenancy should end for the reasons indicated on the 1 Month Notice. However, I have issued orders to the tenant with this decision to avoid future disputes and foster a successful tenancy. Should the tenant not comply with my orders, the landlord may seek to end the tenancy under section 47(1)(l) of the Act by issuing another 1 Month Notice indicating the reason: "Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order" and providing sufficient particulars in the details of cause.

Filing fee

I am of the view both parties have contributed to this dispute and I award the tenant recovery of one-half of the filing fee he paid for this application, or $50.00. The tenant is hereby authorized to deduct $50.00 from a subsequent month's rent in satisfaction of this award and in doing so the landlord must consider the rent paid in full.

Conclusion

The 1 Month Notice is cancelled and the tenancy continues at this time; however, I have issued orders to the tenant in this decision and failure to comply with my orders would be grounds for ending the tenancy in the future.

The other remedies sought by the tenant in his application were severed and dismissed with leave to reapply.

The tenant is authorized to deduct $50.00 from a subsequent month's rent to recover a portion of the filing fee he paid for this application.

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: August 28, 2019

Residential Tenancy Branch