



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL R.E.S
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated July 31, 2019 ("One Month Notice").

The Tenant and an agent for the Landlord ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties.

Section 55 of the Act requires that when a tenant applies to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of

Possession. This is the case if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with Section 52 of the Act.

Issue(s) to be Decided

- Should the One Month Notice be confirmed or cancelled?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Parties agreed that the fixed term tenancy began on March 1, 2019 and was to run to February 28, 2020, with a monthly rent of \$775.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$387.50, and a pet damage deposit of \$387.50.

The Landlord said in the hearing, which was supported by her documentary evidence, that she served the One Month Notice on the Tenant in person on July 31, 2019, with an effective vacancy date of August 31, 2019. The One Month Notice was not signed by the Agent, but it has her name printed on it. The grounds checked off for issuing the One Month Notice were because the tenant has:

- allowed an unreasonable number of occupants in a rental unit;
- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- breached of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The One Month Notice also contains the following handwritten note:

Other tenants living in the unit. Dog off leash and left to roam yard even when owner is not there. Obstruction of walkways and bikes always locked to railings and not @ appropriate bike lockup that is provided. Noise complaints from other tenants in regards to yelling about drugs to another unit.

[reproduced as written]

In the hearing, the Agent said there are no hallways in the residential property; rather, it has a shared courtyard, which is a common area for all tenants. The Agent said the Tenant leaves her dog out without a leash, and that the dog goes into other people's

suites and causes problems with other animals. The Agent said: "It is an ongoing issue, I have spoken to her several times about it."

The Tenant said that the dog is always on a leash now, even though there is no term of the tenancy agreement that requires the Tenant to keep the dog on a leash. The Tenant said she has had the dog on a leash for the last three months.

The Agent submitted a photograph of what she said was the Tenant's dog in a grassy area without a leash. The photograph is dated June 18, 2019, which was prior to the One Month Notice being served.

The Agent submitted a copies of warning letters to the Tenant dated May 14, 2019 and June 5, 2019, warning her about the consequences of letting the dog wander in the common area without a leash. The second letter was stated to be the "final warning letter" and that if the Tenant does not follow the rules set out therein, that it "will lead to an eviction."

The Agent also said that the Tenant has caused problems with her guests jumping the fence to get into the courtyard and incidents of drug use in the laundry room. She also said that the Tenant has had someone staying with her "for quite some time" and that the Tenant gave this person the key to the laundry room.

The Tenant said that she has people over, but that she talked to the Agent about it, received one notice about it, but that it has been rectified, "It's not happening any more. All these issues have been talked about and rectified. I'll do whatever I can do to make things better still", said the Tenant in the hearing.

The Agent said that the Tenant's guests sometimes yell about drugs in the courtyard and interfere with other tenants.

On another matter, the Agent said that the Tenant allows guests to chain lock their bicycles in the walkway, which is a fire safety issue. The Agent said that she has given the Tenant notices to stop this behaviour.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following:

Section 47 of the Act states:

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;

Further, RTB Policy Guideline 8 (PG #8) states:

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. 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.

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.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

[emphases added]

As noted on the first line above: “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 Agent did not point out in the hearing, and I find that the tenancy agreement does not set out any “material terms” that the Tenant has breached. The Landlord has listed a set of behaviours on the Tenant’s part that the Agent and other tenants may find annoying, but that are not material terms in the tenancy agreement. I find the Agent’s primary focus and warning letters were on the Tenant’s dog being loose in the courtyard.

Ending a tenancy is a serious step, which needs to be triggered by a serious breach of the legislation and/or tenancy agreement. The burden of proof is on the Landlord to present the term on which they are relying, by presenting evidence and argument supporting the proposition that the term was a material term.

Further, I find that the Tenant has acknowledged the behaviours that the Landlord has identified as problematic, and she has worked toward rectifying the behaviour in order to maintain her tenancy in the rental unit.

Based on the evidence before me, overall, I find that the Landlord has provided insufficient evidence to warrant ending the tenancy at this time. Further, I find that the One Month Notice does not comply with section 52 of the Act, in that it was not signed by the Agent for the Landlord. Given these considerations of the evidence before me, I cancel the One Month Notice. The Tenant is successful in her Application. The tenancy continues until ended in accordance with the legislation.

Conclusion

I find that the Landlord did not provide sufficient evidence to support the validity of the One Month Notice to End Tenancy for Cause dated July 31, 2019. The Tenant is successful in her Application to cancel the One Month Notice.

I cancel the One Month Notice; it is of no force or effect. I Order the tenancy to continue until ended in accordance with the Act.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: October 11, 2019

Residential Tenancy Branch