Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MORE THAN A ROOF HOUSING and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*; and
- an Order for the landlord to comply with the *Act*, regulation, and/or tenancy agreement pursuant to section 62 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agents M.B., K.M. and C.S. attended on behalf of the housing society landlord and are herein collectively referred to as "the landlord".

As both parties were present, service of documents was confirmed. The tenant testified that he personally served the landlord with the Notice of Dispute Resolution Proceeding package and his evidence for this hearing , which was confirmed received by the landlord. The landlord testified that they personally served the tenant with their evidence, which was confirmed by the tenant.

As such, based on the testimony of the parties, I find that the documents were sufficiently served for the purposes of this hearing in accordance with the *Act*.

Preliminary Issue – Amendment to Tenant's Application

At the outset of the hearing, the landlord confirmed that the word "Housing" should be added to correctly provide the legal name of the housing society landlord. Pursuant to

my authority under section 64(3)(c) of the *Act*, I amended the tenant's Application to correctly provide the full name of the housing society landlord.

Procedural Matters

I explained to the parties 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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the Notice to End Tenancy?

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement, signed by both parties, was submitted into documentary evidence. This tenancy began in February 2019. The tenancy pertains to a bachelor rental unit located in a rental property operated by a non-profit housing society landlord under an agreement with BC Housing to subsidize the monthly rent based on income. According to the terms of the tenancy agreement, monthly rent payable is $1,033.00. The tenant's monthly rent contribution, payable on the first of the month, is $375.00 as a

result of the rent subsidy received. The tenant paid a $516.00 security deposit at the beginning of the tenancy with the landlord continues to hold.

The tenant confirmed that the landlord personally served him with the One Month Notice dated August 19, 2019 on that same day. The tenant filed an Application for Dispute Resolution to dispute the notice the same day.

A copy of the landlord's One Month Notice was submitted into evidence, which states an effective move-out date of September 30, 2019, with the following box checked off as the reason for seeking an end to this tenancy:

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

In the "Details of Cause" section provided on the Notice, the landlord has referred to an "attached letter". I confirmed with the tenant that they also received the attached letter, dated August 19, 2019, which stated, as follows, in part:

> *In our meeting on July 4th, we agreed to rescind your eviction on the condition that you did not have any overnight visitors or guests over between midnight and 6am for the duration of 2019.*
> *However, we have noted the following infractions:*
> - *On August 15th, your guests were here from 12:50-2:06am, and 4:06am onwards.*
> - *On August 17th, your guest arrived at 9:30pm and did not leave until midnight the following evening.*
>
> *This is a breach of the following material term of your tenancy:*
> *Occupants and Guests*
> a. *The tenant shall not permit any person other than a Resident listed in section 5 of this agreement to reside in or occupy the Premises for a period in excess of 14 days whether consecutive or not in any 12 month period without the prior WRITTEN CONSENT of the Landlord.*
>
> *Attached is a One Month Notice to End Tenancy. You must move out of [name of rental property] by 5pm on September 30th, 2019. This decision has been made after several warnings and is final.*

The landlord submitted into documentary evidence copies of the warning letters pertaining to the tenancy agreement term related to occupants and guests that had been sent to the tenant dated April 9, April 17, May 3, and May 13, 2019. On May 21

and June 13, 2019 the landlord sent the tenant letters advising him that he had now exceeded the 14 days provided in the tenancy agreement for guests to occupy the rental unit. On June 25, 2019, the landlord served the tenant with a One Month Notice to End Tenancy for Cause on the basis of the breach of a material term of the tenancy, specifically, the term related to occupants and guests.

On July 4, 2019 the parties met and came to an agreement for the landlord to rescind the One Month Notice dated June 25, 2019 conditional upon the tenant having no more overnight guests between midnight and 6:00 a.m., other than his daughters with prior permission from the landlord, for the remainder of 2019.

The tenant testified that he has not kept track of how many times he has had overnight guests, but did not dispute the landlord's estimate that one of his guests has likely spent 20 nights and that it is possible another guest has spent about a similar amount of time at the rental unit.

The landlord explained that the occupant and guest term is required to maintain their subsidized rent agreement with BC Housing, as all residents of a rental unit need to be declared so that their income can be taken into account for the rent subsidy. The landlord's rental agreement defines a "resident" as anyone who regularly lives in the rental unit or has stayed in the rental unit for at least 14 days, whether consecutive or not, within a 12 month period. Therefore, the landlord submitted that the solution to an issue where a tenant wishes to have someone live or stay in the rental unit for more than 14 days per year, is to add the person to their tenancy agreement. In this case, the building only offers bachelor units, which the landlord testified have an occupancy restriction to one tenant as they are required to follow the National Occupancy Standards. As such, the tenant would be required to relocate if he wished to add one or more of his regular guests as another resident on his tenancy agreement.

The tenant explained that he feels that the social interaction of having guests stay over is important and submitted that the 14-day limitation on a guest's occupancy of the rental unit is an unreasonable restriction in contravention of the standard terms of the tenancy agreement which state, in part:

> *The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.*

The tenant confirmed that the landlord has not restricted access to any of the tenant's guests, nor has the landlord required the guests to check in or require that they provide

identification to access the rental property or in any way prevented the guests from attending at the rental unit.

The landlord confirmed that the occupant and guest term only applies to guests that stay more than 14 days and for which the tenant has not sought the prior written consent of the landlord. The landlord explained that a tenant can send them an email, call them or drop by their office to provide them with a couple of days notice to seek consent for a guest to stay for family issues or for an emergency situation, and that the landlord assesses these requests on a case-by-case basis.

The landlord testified that they had concerns regarding suspicious activity by the tenant's guest. I explained to the landlord that I would not consider any testimony or evidence pertaining to any concerns about guest activity as I did not find that it was relevant since the landlord had not selected any other reasons provided on the One Month Notice as the grounds for the landlord seeking to end the tenancy, aside from breach of a material term of the tenancy.

The parties were provided with an opportunity to try and resolve their dispute through a negotiated settlement but the parties were unable to come to a mutually agreed upon resolution of the matter, and as such I proceeded to determine the matter through an arbitrated decision.

Analysis

The tenant submitted two prior arbitration decisions for consideration as precedents in this matter, however, as I explained to the parties in the hearing, the issues in those cases were not similar to those in this matter. Further, I explained that in determining this matter, I am bound by section 64(2) of the *Act*, which requires that each decision or order must be made "on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part."

Regarding the tenant's application for an order for the landlord to comply with the Act, regulations or tenancy agreement, based on the testimony and evidence presented, on a balance of probabilities, I find that the tenant has not provided sufficient evidence that discloses a contravention by the landlord. The tenant confirmed that the landlord has not impeded the access of the tenant's guests to the rental property or the rental unit. The landlord's issuance of a One Month Notice to End Tenancy is not a contravention of the *Act*, regulations or tenancy agreement. As such, I dismiss the tenant's claim on this issue.

Section 47 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 tenant acknowledged receipt of the landlord's One Month Notice on August 19, 2019. The tenant filed an application to dispute the notice on August 19, 2019, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*. Having reviewed the One Month Notice, I find that it is compliant with section 52 of the *Act* as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end.

In this matter, it was undisputed that the tenant had guests staying at the rental unit in excess of the 14 days provided in the terms of the tenancy agreement. The landlord has based the One Month Notice on the grounds that the tenant's contravention of the occupants and guests term of the tenancy agreement is a breach of a material term of the tenancy agreement. Residential Tenancy Policy Guideline #8. Unconscionable and Material Terms provides guidance on the determination of material terms, as follows, in part:

> *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.

In this case, the landlord is a “public housing body” and the tenant’s rental unit is a “subsidized rental unit” as explained in section 49.1 of the Act, which states, in part:

> **49.1** (1)In this section:
>
> **"public housing body"** means a prescribed person or organization;
>
> **"subsidized rental unit"** means a rental unit that is
>
> (a) operated by a public housing body, or on behalf of a public housing body, and
>
> (b) occupied by a tenant who was required to demonstrate that the tenant, or another proposed occupant, met eligibility criteria related to income, number of occupants, health or other similar criteria before entering into the tenancy agreement in relation to the rental unit.

As a “subsidized rental unit” the tenant’s subsidized rent contribution is calculated based on the income of all the residents of the rental unit and therefore additional occupants staying at the rental unit must be declared and added as residents on the tenancy agreement to ensure eligibility requirements related to income are met. In order to make a differentiation between a guest and a resident, it is reasonable to set

out some standardized criteria regarding length of visits for the landlord to apply. As such, I find that the occupant and guest term is a material term of this tenancy agreement, in order to determine who is a resident and who is a guest, as necessitated by the eligibility requirements that the tenant and any other residents of the rental unit must demonstrate in order to qualify for the subsidized rent amount. The tenant's rental unit is a bachelor unit and because the rent is subsidized by BC Housing, the landlord is subject to the National Occupancy Standards which limit occupancy of a bachelor unit to one person. As such, although the tenant would be required to find a larger unit to move to, this would be the option available to the tenant if he wished to have his guests reside with him beyond the 14 day limit, without the prior written consent of the landlord, and continue to qualify for a subsidized rental unit.

I also find that the landlord provided the tenant with sufficient written notification that there was an issue that they believed constituted a breach of a material term of the tenancy agreement, provided the tenant with an opportunity to resolve the issue in order to continue the tenancy, and made it very clear that the continued contravention of the term of the tenancy would result in a notice to end tenancy.

As such, based on the testimony and evidence presented, on a balance of probabilities, I find that grounds for the landlord issuing the One Month Notice have been proven. Therefore, the tenant's application is dismissed without leave to reapply.

Section 55(1) of the *Act* states that if a tenant makes an application to dispute a notice the arbitrator must grant an Order of Possession if the notice complies with the *Act* and the tenant's application is dismissed. As I have made a finding that the One Month Notice complies with section 52 of the *Act* and the tenant's application to the cancel the One Month Notice is dismissed, the landlord must be granted an Order of Possession.

The effective vacancy date of the notice has now passed. However, as the tenant's rent for the month of October 2019 has already been received by the landlord, this Order of Possession will be dated effective October 31, 2019 at 1:00 p.m. The landlord must serve the Order of Possession on the tenant as soon as possible.

Conclusion

The tenant's application is dismissed in its entirety, without leave to reapply.

I grant an Order of Possession to the landlord effective October 31, 2019 at 1:00 p.m. The landlord must serve this Order on the tenant as soon as possible. Should the

tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: October 28, 2019

Residential Tenancy Branch