Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, RP, LRE, FFT

Introduction

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

- cancellation of the landlords' two 1 Month Notices to End Tenancy for Cause, dated September 2, 2019 ("first 1 Month Notice") and October 17, 2019 ("second 1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to comply with the *Act, Residential Tenancy Regulation* or tenancy agreement, pursuant to section 62;
- an order requiring the landlord to complete repairs to the rental unit, pursuant to section 33;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 17 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed that she did not receive the tenant's application for dispute resolution hearing package. She said that she obtained the hearing information and access code to upload her online evidence, from the RTB. The landlord affirmed that she wanted to proceed with the hearing, despite not receiving a copy of the tenant's application.

The landlord stated that she sent a copy of the landlord's evidence package to the tenant on November 14, 2019, by way of registered mail. In accordance with sections 88 and 90 of the Act, I find that the tenant was deemed served with the landlord's evidence on November 19, 2019, five days after its registered mailing.

The landlord testified that the tenant was served with the landlord's first 1 Month Notice, dated September 21, 2019, on the same date, by leaving a copy on his kitchen counter. The landlord claimed that she made an error on the tenant's rental unit address in this notice, so she was not pursuing an order based on this notice, as she reissued another notice on October 17, 2019. Accordingly, the landlord's first 1 Month Notice, dated September 21, 2019, is cancelled and of no force or effect.

The landlord stated that she served the tenant with a copy of the landlord's second 1 Month Notice, dated October 17, 2019, by way of posting to his rental unit door on the same date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's second 1 Month Notice on October 20, 2019, three days after its posting.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* provides as follows:

> *7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any evidence or submissions from the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 1 Month Notice, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on March 1, 2018. Monthly rent in the amount of $1,600.00 is payable on the first day of each month. A security deposit of $800.00 and a pet damage deposit of $250.00 were paid by the tenant and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties and a copy was provided by the landlord for this hearing. The tenant continues to reside in the rental unit.

The landlord seeks an order of possession based on the second 1 Month Notice. The landlord provided a copy of the second 1 Month Notice for this hearing. The landlord stated that the notice indicated an effective move-out date of November 30, 2019, and the reason was:

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

The landlord said that she provided photographs, letters, and inspection information to support her claims. She stated that the tenant damaged the rental unit, disregarded the tenancy agreement, and caused fire safety issues. She confirmed that the tenant damaged the kitchen counter, causing stains and molding. She claimed that he put up more than two pictures per wall in the rental unit, as well as a large wine rack, wood paddles, animal heads, and a murphy bed, contrary to the tenancy agreement. She explained that the tenant caused fire safety issues by having a makeshift storage leaning up against the rental unit, including parts, pipes, ropes, and tools. She said that this blocks the ventilation and causes the rental unit to look like a garage dump, according to the tenant's neighbours. She maintained that the tenant put a thick tarp near the rock wall in the driveway.

The landlord claimed that on July 16, 2019, she performed an inspection and asked the tenant to rectify the above issues within 60 days. She stated that on September 21, 2019, she did a follow up inspection and the tenant had not rectified anything. She said that during this inspection, she noticed that the tenant caused more damage and garbage to pile up. She explained that she served the first 1 Month Notice on September 21, 2019 and after the tenant notified her that his address was wrong on the notice, she reissued the second 1 Month Notice on October 17, 2019.

When I asked the landlord what "material" terms the tenant breached in the tenancy agreement, she said that she did not know what "material" meant. She said that the tenant did not follow the requirements in the tenancy agreement, such as not putting up more than the two maximum pictures allowed per wall.

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant was deemed to have received the notice. The tenant was deemed to have received the 1 Month Notice on October 20, 2019 and filed his application to dispute it on October 23, 2019. Therefore, he was within the ten-day time limit to dispute the 1 Month Notice.

Section 47(1)(h) of the *Act* states that a landlord may only end a tenancy if the tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after written notice to do so.

Residential Tenancy Policy Guideline 8 defines a material term, in part:

> *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.*

The landlord did not even know what a "material" term was. She said that because there were terms in the tenancy agreement that the tenant failed to obey, he was in breach.

I do not find the tenant's alleged behaviour of hanging more than two pictures or items on a wall to be a breach of a material term. It is not identified as a material term in the tenancy agreement. Even if it was, the landlord has not explained why it is material to the agreement. It simply indicates at clause 21(a) of the tenancy agreement, that the tenant is required to get permission from the landlord if he wants to hang more than two small pictures hooks per wall.

I do not find the tenant's alleged damage to the kitchen counter to be a material breach. It is not identified as such in the tenancy agreement. Even if it was, the landlord has not explained why it is material. It simply indicates in clause 15 of the tenancy agreement, that the landlord will deduct amounts from the tenant's security deposit for damages.

I do not find the tenant's alleged behaviour of storing items against the rental unit property to be a material breach. It is not identified as such in the tenancy agreement. Even if it was, the landlord has not explained why it is material. The landlord did not identify what section the tenant breached in the tenancy agreement.

I also find that if the tenant's alleged behaviour caused breaches that were so material to the parties' tenancy agreement, the landlord would not have given him such a long period of 60 days to correct the issues from July 16, 2019 to September 21, 2019. I also find that the landlord would not have waited until October 17, 2019, before reissuing the second 1 Month Notice, since she indicated the tenant's address incorrectly in the first 1 Month Notice on September 21, 2019. This is a period of over three months from July 16, 2019 to October 17, 2019, that the landlord provided to the tenant to correct "material" breaches which she identified as serious as "fire safety issues."

For the above reasons and on a balance of probabilities, I find that the landlord provided insufficient evidence that the tenant failed to comply with a material term that was not corrected within a reasonable time after written notice to do so. Therefore, I find that the landlord did not issue the second 1 Month Notice, dated October 17, 2019, for a valid reason.

The landlord is not entitled to an order of possession. The landlord's second 1 Month Notice, dated October 17, 2019, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

The landlord is not entitled to an order of possession.

The landlord's 1 Month Notice, dated September 21, 2019, and the landlord's 1 Month Notice, dated October 17, 2019, are both cancelled and of no force or effect.
This tenancy continues until it is 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: December 02, 2019

Residential Tenancy Branch