Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On July 6, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "*Act*").

The Tenant attended the hearing, and R.M. and Y.B. attended the hearing as agents for the Landlord. All in attendance provided a solemn affirmation.

He advised that the Landlord was served with the Notice of Hearing package by hand, but he was not sure when this was done. R.M. confirmed that the Landlord received this package on July 10, 2010. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served with the Notice of Hearing package.

He also advised that he did not submit any evidence for consideration on this file.

R.M. advised that the Landlord's evidence was serve to the Tenant by being posted to his door on July 17, 2020 and the Tenant confirmed that he received this evidence. As service of this evidence complies with Rule 3.15 of the Rules of Procedure, I am satisfied that the Landlord's evidence has been satisfactorily served on the Tenant. This evidence will be accepted and considered when rendering this Decision.

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 is compliant 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?

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.

All parties agreed that the tenancy started on November 1, 2017, that the subsidized rent is currently established at $290.00 per month, and that it is due on the first day of each month. A security deposit of $313.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties agreed that the Notice was served to the Tenant by being posted on the door on June 25, 2020 and the Tenant confirmed that the Notice was received; however, he was not sure when. 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 effective end date of the tenancy was noted as July 31, 2020 on the Notice.

R.M. advised that there is a material term in the tenancy agreement prohibiting guests from living in the rental unit for more than 14 days in a month. As well, as the Tenant is housed in subsidized housing, there is a requirement in the tenancy agreement to disclose any other occupants as this will affect the subsidized rent; however, this information was not disclosed. He stated that someone has been living in the rental unit with the Tenant since December 2019 and that the Landlord was notified of this by complaints from other residents of the building. Warning letters about this breach of a material term were issued to the Tenant in January, March, and May 2020, and these letters were submitted as documentary evidence. He stated that the Tenant never

contacted the Landlord to refute the first warning letter in January 2020. Furthermore, letters sent to the Landlord by the Tenant were submitted as documentary evidence, and the Tenant admits in these letters that he has someone living with him in the rental unit.

The Tenant advised that he was “not denying anything” and stated that his girlfriend moved into the rental unit in March 2020 due to the COVID pandemic. He stated that he made repeated requests to have his girlfriend added onto his tenancy agreement, but the Landlord denied these requests. He then stated that he had been making these requests since January 2020. However, he then corrected himself by saying it was March 2020 when he started making the requests. Finally, he confirmed that he made these requests in January 2020.

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.

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 reasons cited in the Notice are 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:*
>
> > *(d) the tenant or a person permitted on the residential property by the tenant has*
> >
> > > *(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32

(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;

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];

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."

As well, this policy guideline states that "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."

With respect to the reason on the Notice of a breach of a material term, I find it important to note that the policy guideline states that "it is possible that the same term may be material in one agreement and not material in another." I find that this means that determining what would be considered a material term is based on the fact pattern of each specific scenario, and that it is up to the Arbitrator in each case to evaluate the evidence presented and make a determination on this matter. When reviewing the tenancy agreement, I am satisfied that there is a material term which prohibits extra occupants in the rental unit without the written consent of the Landlord.

The consistent and undisputed evidence before me is that the Landlord provided warning letters to the Tenant on January 14, March 3, May 6, and May 20, 2020 reminding the Tenant of this material term, and that this needs to be corrected. Furthermore, the Tenant confirmed that this person has lived in the rental unit since March 2020.

When reviewing the totality of the evidence before me, I am satisfied that there is a material term in the tenancy agreement that prohibits occupants in the rental without the written consent of the Landlord. Moreover, I am satisfied that the Landlord has served the Tenant with multiple warning letters advising that there was a problem, that the problem must be fixed by a deadline included in the letter, and if the problem is not fixed by the deadline, the Landlord will end the tenancy. I am also satisfied from the Tenant's

evidence that this occupant has been living in the rental unit since at least March 2020 and still continues to live there.

Ultimately, I find that there is sufficient evidence to justify service of the Notice under the reason of a breach of a material term. As such, I dismiss the Tenant's Application and pursuant to Section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession that takes effect at **1:00 PM on August 31, 2020** after service of this Order on the Tenant. The Landlord will be given a formal Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit after service of the Order, the Landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The Tenant's Application is dismissed without leave to reapply and the Landlord is provided with a formal copy of an Order of Possession effective at **1:00 PM on August 31, 2020** after service on the Tenant. Should the Tenant or any occupant 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: August 7, 2020

Residential Tenancy Branch