Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Camargue Investments Inc, DBA Pacific Manor and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: CNC, FF
For the landlord: OPC

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (Act).

The tenant's assistant/advocate, DC, on behalf of the tenant applied for:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord; and
- recovery of the filing fee.

The landlord applied for:

- an order of possession of the rental unit pursuant to Notice issued to the tenant.

The tenant's assistants and advocates, DC and DH, and the landlord's agents (agent) attended the hearing, the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, question the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters-

At the outset of the hearing, the tenant's advocates confirmed receiving the landlord's evidence. The agents confirmed receiving all of the tenant's evidence, with the exception of agent DH's authorization to represent the tenant.

Rule 6.7 allows a party to a dispute resolution be represented by an agent and may be assisted by an advocate or any other person whose assistance the party requires in order to make their presentation.

I was provided proof of DH's authority to act for the tenant and I proceeded with the hearing as there is no requirement in the Rules that the other party be notified.

Additionally, I determined that the landlords were not prejudiced by the tenant's assistants or advocate representing the interests of the tenant, as the landlord had the burden to prove the cause listed on the Notice.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice issued by the landlord and recovery of the filing fee?

Is the landlord entitled to an order of possession of the rental unit pursuant to their Notice?

Background and Evidence

The landlord submitted a written tenancy agreement between the tenant, KM, and the landlord, showing a tenancy start date of August 1, 2013, a fixed term through February 1, 2014, monthly rent of $780, due on the 1st day of the month, and a security deposit of $390 being paid by the tenant to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

The current monthly rent is $925.

Pursuant to the Rules, the landlord's agents proceeded first in the hearing and testified in support of issuing the tenant the Notice. The parties submitted a copy of the Notice, showing it was dated August 28, 2020, listing an effective end of tenancy on September 30, 2020. The undisputed evidence was that the Notice was posted on the tenant's door on August 28, 2020.

The cause listed on the Notice as the reason for which the landlord is seeking to end this tenancy is that the tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlord's additional relevant documentary evidence included a copy of a letter from the landlord to the tenant.

In support of their Notice, the landlord submitted that the tenant has breached a material term of the written tenancy agreement, specifically paragraphs 18 and 19.

Paragraph 18 speaks to occupants and guests, and states that if the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy.

Paragraph 19, which seems to be the more relevant section to which the landlord refers, states that only the persons named in the rental unit may occupy the rental unit or residential property. Any other person, who without the landlord's written permission occupies or resides in the rental unit or on the residential property for more than 14 cumulative days in a calendar year "will be doing so contrary to this Agreement. The Tenant must apply in writing to the landlord if the tenant wishes a person not named in Clause 1,2, or 3 to become an occupant or co-tenant. Failure to obtain the landlord's written permission is a breach of a material term".

The agent said that they took over management of the residential property a little over a year ago, and that the tenant has not lived in the rental unit for at least a year.

The agent said that DC has lived in the rental unit off and on for at least five years, and that he was asked to apply to become a tenant, but he has not.

The agent submitted that the tenant had a fall, resulting in her becoming blind, and leaving her with a brain injury. The agent submitted the tenant has been living in a local senior's care home and is still living there. The agent said they have been attempting to speak with an authorized agent who is in charge of the tenant's care and affairs, such as a family member or someone with a power of attorney, but have been unsuccessful.

The agent said that the tenant, KM, happened to be visiting the rental unit on August 19, 2020, and they hand delivered the tenant a letter informing her that she was in breach of her tenancy agreement, sections 19 and 20. Further, the letter informed the tenant,

“This must be rectified immediately, by yourself or your contact/worker through disability i.e. social work or your legal advocate”.

The agent confirmed that the monthly rent continues to be paid by KM.

The landlord’s additional relevant evidence included an emailed statement from the former property manager of the residential property for an unspecified number of years, who remained in that postion until September 2019.

Response of DH –

DH said she has been a friend of the tenant for 40 years and is quite familiar with the tenant and her issues, including the present one relating to this dispute.

DH submitted that the letter the tenant received on August 19, 2020, stated that the tenant had until September 28, 2020, to address the problem, but it differed with the letter the landlord submitted into evidence.

DH confirmed that KM is blind and has a head injury and requires care, which is being provided now by DC, who lives in the other bedroom. Further DC is a friend and roommate to KM, assisting with her needs.

DH said the landlord’s agents here were formerly maintenance workers at the residential property and were aware that DC has lived in the rental unit for six years.

DH said that KM went to the care home in February 2020, and was released on September 24, 2020, at the request of DH and DC.

Response of DC –

DC said that he has lived in the rental unit for six years and provides the care for KM.

DC said that the tenant was unable to speak or read, but was with him during the hearing.

Analysis

Tenant’s application –

When a tenant has properly filed an application disputing a landlord's Notice to end a tenancy, the onus is on the landlord to substantiate that they had sufficient cause on the day the Notice was issued to end this tenancy. In this case, an application was filed on behalf of the tenant on September 3, 2020, which was within the required time.

Where a Notice to End Tenancy is disputed, the landlord has the burden to prove that the tenancy should end for the reasons indicated on the Notice, which in this case, is that the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Residential Tenancy Branch Policy Guideline 8 states that a material term is a term that is of such importance that the most trivial breach of the term gives the other party the right to end the tenancy and does not become material due to its inclusion in the written tenancy agreement. The landlord, in this case, bears the burden of proof.

In this case, the agent testified that the term relied upon by the landlord to argue that the tenant breached a material term concerned paragraphs 18 and 19. She asserted the tenant must not have an unreasonable number of occupants and that an occupant staying in the rental unit more than 14 days in a calendar year must apply to the landlord to become a tenant or an occupant.

I note that the landlord's documentary evidence also mentioned an alleged contravention of paragraph 20 of the tenancy agreement, which dealt with assignments or sub-leases. However, the agent did not speak to this paragraph in the hearing and I have not considered it.

In this case, I find the legal principle of 'estoppel' applies to this application.

Estoppel is a rule of law that states when one party, the landlord here, by act or words, gives the other party, the tenant here, reason to believe that a certain set of facts upon which the other party takes action, the first party (landlord) cannot later, to their benefit, deny those facts or say that their earlier act was improper. The rationale behind estoppel is to prevent injustice owing to inconsistency.

In effect, estoppel is a form of waiver, when one party does not enforce their rights and the other party relies on this waiver. Therefore, I find that when the landlord knew that DC was residing in the rental unit with the tenant for six years, or "for years", according to the agents, and failed to take action at that time or any time until August 2020, they

waived their right to seek enforcement of the aforementioned terms in the tenancy agreement, more particularly, paragraphs 18, 19, or 20.

I find the landlord's actions in delaying enforcement of the terms for six years show that these terms were not material.

For these reasons, I find the landlord is estopped from seeking enforcement of paragraphs 18, 19, and 20 of the written tenancy agreement.

On this basis, I find that the landlord's One Month Notice to End Tenancy for Cause dated and issued on August 28, 2020, is without merit. The tenant's application to cancel the Notice is **granted**.

As the tenant's application is successful, I grant the tenant recovery of the filing fee of $100.

The tenant is authorized to deduct $100 from the next or future month's monthly rent payment. The tenant is instructed to notify the landlord when this deduction is being taken so that the landlord does not serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Landlord's application –

As I have cancelled the Notice at issue in this dispute, I **dismiss** the landlord's application seeking an order of possession of the rental unit based upon that Notice, **without leave to reapply**.

Conclusion

The tenant's application is granted and I have cancelled the Notice of August 28, 2020.

The landlord's application is dismissed, without leave to reapply.

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 26, 2020

Residential Tenancy Branch