Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL, CNC, OLC, MNDCT

Introduction

This proceeding dealt with a disputed 1 Month Notice to End Tenancy for Cause dated on June 24, 2020. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The hearing was held over two dates and an Interim Decision was issued on August 20, 2020. The Interim Decision should be read in conjunction with this decision.

The tenant confirmed that she continues to occupy the rental unit and seeks to continue the tenancy. As such, I determined it necessary and appropriate to proceed to resolve the dispute concerning the 1 Month Notice to end Tenancy for Cause and I severed the tenant's other requests for orders for compliance and monetary compensation pursuant to Rule 2.3 and Rule 6.2 of the Rules of Procedure which provide:

> **2.3 Related issues**
> Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.
>
> **6.2 What will be considered at a dispute resolution hearing**
> The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

The tenant's other remedies are dismissed with leave, meaning the tenant is at liberty to file another Application for Dispute Resolution to seek orders for compliance and monetary compensation.

At the reconvened hearing of October 6, 2020, the landlord informed me that he served the tenant with another 1 Month Notice to End Tenancy for Cause to indicate other reasons for ending the tenancy and the parties have another hearing scheduled for later this month. The landlord indicated he still wished to pursue ending the tenancy based on the 1 Month Notice before me but that if he were unsuccessful the parties would have another hearing to deal with the subsequent 1 Month Notice. Issuance of another notice to end tenancy does not automatically invalidate or cancel a previous notice to end tenancy. As such, I continued to hear evidence with respect to the 1 Month Notice dated June 24, 2020 and the parties were informed that I was not hearing matters pertaining to the subsequent 1 Month Notice since it has been disputed and is scheduled for hearing on another date.

Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause dated June 24, 2020 be upheld or cancelled?
2. Award of the filing fee(s).

Background and Evidence

The tenant initially took possession of the rental unit in 2016 under the first tenancy agreement. There have been approximately six tenancy agreements executed by the parties since 2016 with the most recent tenancy agreement commencing on March 1, 2020 and set to expire on June 30, 2020. As recorded in the Interim Decision, upon expiry of the fixed term, the tenancy continued on a month to month basis by mutual agreement of the parties.

On June 24, 2020 the landlord issued the subject 1 Month Notice to End Tenancy for Cause and sent it to the tenant via registered mail on June 25, 2020. The 1 Month Notice has a stated effective date of July 31, 2020 and indicates the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;

- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has or is likely to damage the landlord's property; and,
- 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 on the 1 Month Notice, the landlord wrote:

Details of Causes(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

1. By keeping and hiding pets in the rental unit and given written warning notice two times and pet was seen three times on June 13, 2020 at 1:10pm which pets are not allowed according to the contract.

2. By not informing immediately landlord for any damage even over a month and cost more damage to property and money to landlord.

3, Using garage as storage even when landlord given several notice and the last written notice on June 22, 2020.

Below, I have summarized the landlord's submissions and the tenant's responses concerning the reasons indicated on the 1 Month Notice:

1. Significant damage

The landlord initially complained of repairs that were undertaken by the landlord in January 2018 and February 2018 (a leaking faucet in the bathroom and a leaking drain in the kitchen); however, the landlord did not provide receipts to show the landlord incurred significant cost to repair significant damage. Rather, the landlord only provided a photograph of a water stain in the bathroom sink. I noted that the landlord had entered into new tenancy agreements with the tenant after those dates and I informed the landlord that if the tenant caused significant damage to the property based on those events it would be unlikely the landlord would enter into new tenancy agreements with the tenant. As such, I suggested the landlord bring forward more recent concerns regarding significant damage and I did not require a response to these issues from the tenant.

The landlord proceeded to make the following submissions concerning significant damage:

- In February 2020 the tenant complained of excessive lint in the common laundry room and the tenant indicated that she had been aware of it for 10 days prior. The landlord submitted that the dryer vent had become disconnected so the landlord repaired the issue with a new exhaust pipe and clamp.

- In June 2020 the tenant complained of discolouration on the ceiling the bedroom that was once her daughter's bedroom. The landlord attended the property and found that there was a vanity over the heat register and the discolouration was likely lint coming from a tablecloth on the vanity. The landlord submitted that this caused the landlord to incur his time to clean the lint from the ceiling with a towel for approximately 30 minutes. The landlord also called a roofing contractor who found no leak from the exterior of the property and suggested the discolouration was the result of a lack of air circulation because the tenant does not open the door to her daughter's bedroom enough.

The tenant responded that:

- The tenant notified the landlord in February 2020 that she found an excessive amount of lint in the common laundry room and that she would clean it up, via text message. When she went to the common laundry room approximately a week later she found more lint. The tenant did not know it was her responsibility to investigate and determine the cause of the excessive lint and diagnose the issue as being a disconnected dryer exhaust pipe. The tenant pointed out that the laundry room is shared with other tenants and the landlord had previously secured the dryer vent pipe with scotch tape.
- The tenant agreed there is a vanity over the heat register in her daughter's bedroom but that it does not block the heat register. The tenant is of the position the discolouration is actually mould and that she had complained to the landlord to rectify the mould by way of a letter and that this 1 Month Notice is in retaliation for her written complaint and demand that he repair the problem. The tenant suspects the mould is the result of a prior squirrel infestation in the attic. The tenant stated the bedroom is heated but she did acknowledge that she often leaves the door to her daughter's bedroom closed but her daughter does come and go and the tenant also goes into her daughter's bedroom from time to time.

2. Illegal activity

The landlord is of the position that the tenant is using the detached garage for storage and the garage is to be used for parking, not storage. I asked the landlord to describe the law the tenant is breaking by using the garage for storage and the landlord could not describe one. As the landlord could not describe an illegal activity, I dismissed this reason for ending the tenancy summarily without hearing from the tenant.

3. Breach of a material term of the tenancy agreement

The landlord submitted the tenant has breached two material terms of the tenancy agreement: the term that provides for parking and the “no pets” clause.

With respect to parking, the landlord initially submitted that the tenant has been parking in the driveway when she should be parking in the garage. I noted that the tenancy agreement indicates the tenant is to be provided one parking space on the property but that it does not specify where the parking space is located or that it is a material term. As such, I informed the landlord that I would not consider this to be a breach a material term in the absence of any specificity as to where she is to park her car on the property. The landlord subsequently withdrew this reason for ending the tenancy and stated he approached this issue in a different way on the subsequent 1 Month Notice to end Tenancy for Cause he issued to the tenant. Accordingly, I did not consider this reason further and I did not illicit a response from the tenant.

As for the “no pets” clause, the landlord submitted that the tenant is not permitted to have any pets and she has a cat in the rental unit. The landlord submitted that he observed the cat in the rental unit around Christmastime in December 2019 and he sent a breach letter to the tenant on January 2, 2020 via registered mail. The registered mail was delivered on January 11, 2020. The landlord stated he saw the cat again in the rental unit in June 2020 when he and the roofing contractor came to inspect for leaks.

The tenant testified that she does not own a cat; however, she has taken care of her daughter’s cat from time to time when her daughter goes out of town on a weekend or for a week or two. The tenant acknowledged she had the cat in the rental unit in December 2019 and then when she received the breach letter in January 2020, she considered the matter resolved because the cat had returned to her daughter’s house. The tenant acknowledged the cat was in the rental unit again in June 2020 when her daughter was away again.

The tenant was of the position that she told the landlord she cat-sit when the tenancy started in 2016 and he did not have an issue with it. As well, the other tenants on the property have cats. The tenant also submitted that since she does not own the cat and she only occasionally cat-sits she is not in breach of a material term of the tenancy agreement.

The landlord denied the tenant told him years ago in 2016 that she was cat-sitting. The landlord acknowledged that he saw a cat in the rental unit in 2016 but that he stated he did take issue with it which is why he issued a breach notice to the tenant a number of times. The tenant denied receiving any other breach notices other than the one that was delivered in January 2020.

The landlord acknowledged the other tenants in the building have cats but explained he made the decision to allow them to have cats and the tenant is not permitted because there are different flooring materials in the units (hardwood flooring versus laminate flooring).

The tenant stated that if her tenancy is at risk of ending due to the cat, she is prepared to pay a pet deposit or cease cat-sitting for her daughter at the rental unit.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Having dismissed the "illegal activity" reason summarily, I proceed to analyze the other two reasons indicated on the 1 Month Notice dated June 24, 2020.

Significant damage

With respect to the landlord's assertion that the tenant has caused "significant damage" to the property, I find the landlord did not provide sufficient evidence for me to conclude significant damage has resulted from the tenant's actions or lack thereof, as explained below.

The landlord submitted that the dryer vent became detached and this required a new exhaust pipe and clamp. I also heard the laundry room is shared. I was not provided any evidence that damage resulted from the detached dryer vent. Nor, was I provided receipts to demonstrate a significant repair cost was involved. Further, I have not ben provided evidence that it is the tenant's actions that caused the dryer vent to become detached and the tenant provided evidence that the former exhaust pipe was held on with scotch tape. Accordingly, I find there to be lack of evidence that the tenant caused significant damage to the property with respect to the dryer vent and it would appear to me that a proper attachment of the vent pipe was in order, which is the landlord's responsibility.

With respect to the discoloured ceiling, the landlord was of the position there was lint on the ceiling that required wiping with a towel for 30 minutes. If that is the case, I do not see this as being "significant damage" that warrants eviction of a tenant.

In light of the above, I find the landlord has not established that the tenant has caused significant damage to the property and I find ending the tenancy for that reason is not warranted.

Should the tenant remain of the position the discolouration is mould, the tenant may make another Application for Dispute Resolution and seek repair orders.

Breach of a material term

With respect to the landlord's assertion of breach of a material term, the landlord submitted the tenant has violated the "no pets" clause. On the third page of the tenancy agreement are hand-written statements that are initialled by both parties, including the following:

> "2. No smoking and no pets allowed in the rental unit."

Also on the third page, in hand-written notation that references 10 additional terms in an addendum dated June 15, 2016 that continue to apply. Upon review of the addendum and its 10 terms, I do not see any prohibition on having pets. Accordingly, the only term I see in the tenancy agreement that provides for no pets is the term provided in quotes above.

Based on the tenancy agreement that commenced on March 1, 2020, I find it is clear that the parties agreed that there would be no pets in the rental unit. It is also undisputed that at least from time to time the tenant has permitted a cat in the rental unit. While the tenant submitted that the cat seen in the rental unit is not her cat, that it belongs to her daughter and that the tenant only cat-sits, I find it reasonable to interpret the "no pets" term to mean no pets or animals are to be permitted in the rental unit by the tenant and I find it irrelevant who owns the pet. However, to end the tenancy, I must be satisfied the "no pets" clause is a material term.

Residential Tenancy Policy Guideline 8: *Unconscionable and Material Terms* provides information and policy statements concerning material terms. The policy guideline provides:

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.

[My emphasis underlined]

There is no indication in the tenancy agreement that the “no pets” term is a material term. Nor, did the landlord make any arguments that the “no pets” term is a material term in his submissions to me. The landlord provided a copy of one breach letter

concerning the cat as evidence even though he indicated there had been two in the Details of Cause. The breach letter before me is dated December 26, 2019 I note the landlord referred to the tenant as being in breach of her tenancy agreement but he did not indicate she was in breach of a material term. I also heard from the landlord that he had seen a cat in the rental unit in 2016, 2019 and 2020 yet he did not move to end the tenancy until much more recently, after the tenant complained of mould in the rental unit. Given all of these considerations, I find the landlord did not sufficiently demonstrate that the "no pets" term is a material term of the tenancy agreement. Accordingly, I am unsatisfied the landlord was in apposition to end the tenancy for breach of a material term of the tenancy agreement.

In light of the above, I grant the tenant's request that I cancel the 1 Month Notice dated June 24, 2020. The landlord's application for an Oder of Possession is dismissed.

Despite finding the landlord did not establish the "no pets" clause was a material term of the tenancy agreement, I am satisfied that the "no pets" clause is a term and the tenant remains obligated to comply with that term by not permitting or allowing animals to stay or occupy the rental unit. Accordingly, pursuant to the authority afforded me under section 62 of the Act, **I order the tenant to cease permitting the cat in the rental unit.** The tenant stated she only cares for the cat on occasion for her daughter and it is unclear whether the cat is currently occupying the rental unit. If so, **I order the tenant to have the cat removed by October 31, 2020.**

Should the landlord find the cat in the premises again after October 31, 2020, the landlord may pursue ending the tenancy under section 47(1)(l) of the Act by issuing another 1 Month Notice to End Tenancy stating the following reason for ending the tenancy:

- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

Since the tenant was successful in disputing the 1 Month Notice, I award the tenant recovery of the $100.00 filing fee she paid for her Application for Dispute Resolution. The tenant is provided a Monetary Order in the amount of $100.00. The tenant is authorized to deduct $100.00 from a subsequent month's rent to satisfy this order.

Conclusion

The 1 Month Notice to End Tenancy for Cause dated June 24, 2020 is cancelled and the tenancy continues until such time it otherwise ends.

I have issued orders to the tenant with respect to no permitting the cat in the rental unit and removing the cat from the rental unit by October 31, 2020.

The tenant is awarded recovery of the filing fee. The tenant is authorized to deduct $100.00 from a subsequent month's rent to satisfy this order; however, the tenant is also provided a Monetary Order in the amount of $100.00 in the event the tenancy ends before the award is deducted from rent.

The other remedies sought by the tenant in her Application for Dispute Resolution were severed from this Application for Dispute Resolution and dismissed with leave to reapply.

The landlord's application was dismissed in its entirety.

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 8, 2020

Residential Tenancy Branch