



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PCPM Ltd. as agent for Pacific Cove Island
Prope and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice)

I note that section 55 of the Act requires that when a tenant submits an Application 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 One Month Notice is upheld and the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act.

The hearing was convened by telephone conference call and was attended by the Tenant and an agent for the Landlord (the Agent), both of whom provided affirmed testimony. As the Agent acknowledged receipt of the Notice of Dispute Resolution Proceeding from the Tenant, including a copy of the Application and the Notice of Hearing, and raised no concerns regarding the method of service or service timelines, the hearing therefore proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence and neither party raised concerns regarding the methods of service or service timelines, I accepted the documentary evidence before me from both parties for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided for them in the Application.

Preliminary Matters

During the hearing I identified that the Landlord listed in the tenancy agreement was different from the Landlord listed in the Application. As the parties agreed that the tenancy agreement was correct, the Application was amended to correctly name the Landlord.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If the One Month Notice is upheld, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Background and Evidence

The fixed term tenancy agreement in the documentary evidence before me, states that the tenancy commenced on November 1, 2016, and that the fixed term was set to end on October 31, 2016. However, at the hearing the parties agreed that the end date stated in tenancy agreement was a clerical error and should have been October 31, 2017. The parties also agreed that the tenancy continued on a month to month (periodic) basis at the end of the fixed term. The tenancy agreement stated that rent in the amount of \$850.00 was due on the first day of each month, and that a security deposit in the amount of \$425.00 was required. The parties confirmed that rent had increased since the start of the tenancy in 2016, and was now \$938.00, plus \$10.00 for storage. They also agreed that the Landlord still holds the full \$425.00 security deposit in trust. In addition to the above noted terms, the tenancy agreement stated that a \$100.00 rent increase applies to each additional occupant not listed on the tenancy agreement, and contains a \$300.00 liquidated damages clause, among other things.

The Agent stated that a One Month Notice was sent to the Tenant by registered mail on November 23, 2020, and provided me with the registered mail tracking number, which has been recorded on the cover page of this decision. The Canada Post tracking website indicates that the registered mail was sent as described above, and delivered the following day on November 24, 2020. Although the Tenant could not confirm the

exact date that they received it from their mailbox, they acknowledged receipt that week.

The One Month Notice in the documentary evidence before me is in writing on the approved form, is signed and dated November 23, 2020, has an effective date of December 31, 2020, and states that the reason for ending the tenancy is a breach of a material term. In the details of cause section of the One Month Notice it states that the Tenant refused bedbug treatment for a second time on November 16, 2020, and a third time on November 17, 2020, and that they were issued a caution notice on November 19, 2020, advising them to respond and to allow treatment by November 23, 2020. It also states that based on the Tenant's response to the caution letter and their lack of cooperation in allowing bedbug treatment, the Tenant left the Landlord with no option but to serve the One Month Notice.

At the hearing the parties provided contradictory testimony with regards to whether or not the Tenant had in fact refused bed bug treatment and whether or not the Tenant had breached a material term of the tenancy agreement as alleged by the Landlord. The Agent stated that the Tenant had breached terms 17, 27 and 28 of the tenancy agreement by refusing, on numerous occasions, to allow the Landlord to enter the rental unit and treat an extensive and ongoing bed bug infestation, including after being issued with letters on November 19, 2020, and January 1, 2021, advising them that they needed to allow treatment or risked an eviction.

Although the Tenant acknowledged that there is currently an ongoing bed bug infestation in their rental unit, they stated that it is not as extensive as argued by the Agent, as it is restricted to their bedroom, that their rental unit was not initially infested at the time the Landlord first wanted to treat the rental unit, and denied that they had refused treatment. Instead, the Tenant stated that they had followed the direction of pest control experts by spreading diatomaceous earth around their bed and that they were not refusing treatment but wanted the Landlord to treat only their bedroom and employ heat treatment instead of chemical treatment. Further to this, the Tenant argued that neither of the above noted letters meet the definition of breach letters as set out in the Residential Tenancy Policy Guideline (the Policy Guideline) because the timelines given were unreasonable and that none of the terms relied on by the Landlord for issuance of the One Month Notice are material terms as no conversation to that affect was ever had and nothing in the wording of these terms suggests that they are material terms of the tenancy agreement.

Although the Agent agreed that none of the above noted terms of the tenancy agreement explicitly state that they are material terms, and could not be sure what conversation was had with the Tenant regarding these terms at the start of the tenancy as they were not the agent who completed the tenancy agreement with the Tenant, they none the less argued that the terms were material based on their wording and the importance of these terms in the overall scheme of the tenancy agreement.

Both parties submitted documentary evidence for my review, including copies of the tenancy agreement and One Month Notice, proof of the bed bug infestation, copies of the November 19, 2020, and January 1, 2021, letters to the Tenant from the Landlord, self-authored submissions and timelines, various documents regarding bed bug treatment, Notices of Entry issued by the Landlord, and bed bug treatment preparation instructions issued to the Tenant by the Landlord.

Analysis

Based on the documentary evidence before me and the affirmed testimony of the parties at the hearing, I find that the terms of the tenancy agreement are as set out in the documentary evidence before me, with the exception of the end date for the fixed term, which the parties agreed was October 31, 2017, and the current rent amount payable under the tenancy agreement, which is \$938.00, plus \$10.00 for storage.

Based on the affirmed testimony of the parties and the documentary evidence before me, I am satisfied that the One Month Notice before me was sent to the Tenant by registered mail on November 23, 2020, and delivered to the Tenant's mailbox on November 24, 2020. Although the Tenant could not recall exactly when they received the registered mail package from their mailbox, they acknowledged receiving it the week of November 24, 2020. Section 90(a) of the Act states that documents given or served by mail are deemed received 5 days later, if not earlier received. As a result, I deem the Tenant served with the One Month Notice on November 28, 2020. As the Tenant filed their Application seeking to dispute the One Month Notice on December 7, 2020, I find that the Application was filed on time in compliance with section 47(4) of the Act.

Section 47(1)(h) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if 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.

Before determining whether the Tenant has either failed to comply with a material term of the tenancy agreement or whether they have failed to correct the situation within a reasonable time after the landlord gave written notice to do so, I find that I must first determine if the terms relied on by the Landlord for issuance of the One Month Notice are in fact material terms of the tenancy agreement. Policy Guideline #8 defines a material term of a tenancy agreement as 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. It also states that to determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch (the 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, and that it falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

At the hearing the parties disagreed about whether the terms of the tenancy agreement relied on by the Landlord for the issuance of the One Month Notice, terms 17, 27, and 28, were in fact material terms of the tenancy agreement. Although the Agent argued that they were, there is no indication in the wording of any of the above noted terms of the written tenancy agreement indicating that they are material terms of the tenancy agreement, and the Agent acknowledged at the hearing that they are unaware of any discussion with the Tenant regarding the materiality of these terms at the time the tenancy agreement was entered into. The Tenant denied that terms 17, 27, and 28, were material terms of the tenancy agreement and provided affirmed testimony that no discussions were ever had with them at the time the tenancy agreement was entered into indicating that these were material terms. Further to this, the Tenant argued that the wording in the tenancy agreement does not indicate that these terms are material terms, and as a result, they could not possibly have known that they were material terms at the time the tenancy agreement was entered into.

As stated above, it is the responsibility of the person relying on the term to satisfy the arbitrator at the hearing that the term is a material term. Based on the above, I find that the Agent has failed to satisfy me on a balance of probabilities that terms 17, 27, and 28, are material terms of the tenancy agreement as nothing in the tenancy agreement indicates that they are and there is no evidence that any discussion regarding the materiality of these terms was had with the Tenant at the time the tenancy agreement was entered into. Further to the parties did not agree that these terms were material terms of the tenancy agreement. As a result, I find that the Landlord did not have grounds to issue the One Month Notice under section 47(1)(h) of the Act for a breach of a material term of the tenancy agreement by the Tenant. I therefore grant the Tenant's

Application seeking cancellation of the One Month Notice and order that the One Month Notice dated November 23, 2020, for breach of a material term is cancelled and of no force or effect. As a result, I also order that the tenancy continue in full force and effect until it is ended by one or both of the parties in accordance with the Act.

Despite the above, section 32(1) of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Although I have made no findings of fact in this decision with regards to whether or not the Tenant has prohibited the Landlord from exercising their rights and obligations under section 32(1), or any other section of the Act, the Tenant is cautioned that *if* they are prohibiting the Landlord from addressing a bed bug infestation in the rental unit, the Landlord *may* have cause under another subsection of section 47 of the Act, such as 47(1)(d)(i), (ii), and/or (iii), to serve and enforce a One Month Notice and end the tenancy. The Tenant is also cautioned that if they are in breach of any terms of their tenancy agreement, even terms which are not deemed to be material terms of the tenancy agreement, the Landlord may seek enforcement of those terms with the Branch, and that if the Tenant fails to comply with orders from the Branch with regards to those terms within 30 days of the later of the following dates: the date the tenant receives the order, or the date specified in the order for the tenant to comply with the order, the Landlord may serve and enforce a One Month Notice pursuant to section 47(1)(l) of the Act.

Conclusion

The Tenant is successful in their Application seeking cancellation of the One Month Notice.

I order that the One Month Notice dated November 23, 2020, is cancelled and that the tenancy continue in full force and effect until it is ended by one of the parties 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 *Act*.

Dated: March 23, 2021

Residential Tenancy Branch