



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, OLC, PSF, OT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55.

At the commencement of the hearing, the tenant's advocate advised me that an order regarding the remainder of the tenant's issues was no longer sought. As such, I dismissed them without leave to reapply.

The tenant attended the hearing and was represented by an advocate, AM. The landlord attended the hearing and was represented by an agent, her son, RS ("landlord"). As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceedings package; the tenant confirmed receipt of the landlord's evidence. Neither party had concerns with timely service of documents.

Preliminary Issue

At the commencement of the hearing, a lawyer supervising the tenant's advocate called into the hearing asking to listen in for the purposes of evaluating the tenant's advocate. Both parties were given an opportunity to provide submissions regarding whether I should or should not allow this. After hearing the submissions of the landlord, the supervising lawyer withdrew her application for to listen in, and removed herself from the teleconference hearing.

Issue(s) to be Decided

Should the landlord's notice to end tenancy be upheld or cancelled?

Background and Evidence

The landlord gave the following testimony. This tenancy originally began in 2014, however a second tenancy agreement was entered into in 2017. This tenancy agreement commenced on May 1, 2017 and a copy of it was provided as evidence by the tenant. Noted by the landlord is the fact that the tenancy agreement provides for 2 parking spaces. The landlord testified that 2 spaces were permitted because at the time the tenancy agreement was signed, the tenant's boyfriend was also staying in the rental unit. The boyfriend no longer occupies the unit with the tenant.

On November 29, 2020, the landlord's agent RS personally served the tenant with the One Month Notice to End Tenancy for Cause ("Notice") which the tenant acknowledges receiving on that date. A copy of the Notice was provided by both parties.

The Notice provides an effective date of December 31, 2020 and the reason for ending the tenancy is as follows:

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

Under "details of cause" the landlord states:

Oct 16th, 2020 - Unit was inspected. Tenant was told uninsured vehicles had to be removed from the property, all items from patio and outside the building would needed to be removed, suite needed to be cleaned and organized.

Oct 20th, 2020 - Tenant was verbally told to remove two uninsured vehicles and other items from the property, clean and organize inside of unit.

Nov 04, 2020 - As issues above were not tended to, a written given a Cautionary Notice to clean up the suite and exterior of the unit was given. Specifically, the tenant was asked to remove two uninsured vehicles from the property, to clean the suite and remove personal belongs from outside the suite. Tenant had until Nov 18th to complete the tasks in full. The tenant has not complied.

The landlord testified that the rental unit is located in a house with 2 other rental units, one being occupied by his aunt. The aunt has mobility issues and has been communicating with the tenant about debris and accumulations around the property for some time. No written communications were provided for this hearing.

There are issues within the family and the family has been ordered to dispose of the house. The landlord asked the tenant to “clean up the mess”. There are still 4 vehicles on the property – 3 cars and a motorcycle. The landlord submits the tenant may have one vehicle only. The landlord further submits that the cars located on the property do not all have proper insurance as some cars are missing front plates or the plates on the front and rear of the cars do not match.

There is lots of “stuff” inside the tenant’s unit as well, including damaged floors and carpets that need replacing. In trying to market the property, help his family members, the landlord wants vacant possession so the family can get rid of the property in short order. The landlord is having difficulty marketing the house due to the debris and accumulations belonging to the tenant. It’s been several months since the landlord told the tenant to clean the property up. The landlord offered to assist the tenant by helping her get a container and find a place more suitable for her lifestyle.

The landlord provided photographs of both the inside and outside of the rental unit, taken on December 26, 2020. The landlord submits they photos accurately depict the state the residential property at the time they were taken.

The tenant’s advocate gave the following submissions. The tenant is allowed 2 cars on the property according to the tenancy agreement. The grounds for ending the tenancy are of not maintaining reasonable cleanliness, however the tenant argues that this is not a material term of the tenancy.

On November 4th, the tenant was given a caution notice that a material term had been breached, however he did not specify which material term. The landlord has not provided any evidence of a material term, therefore none was breached and the landlord cannot establish the grounds to end the tenancy. The landlord only issued a single warning, on November 4th, giving the tenant only two weeks to rectify. This is unreasonable, given the tenant’s personal factors: her brother recently passed away; she lives with disabilities including a brain injury; and the tenant requires the assistance of an outreach worker to help her in cleaning up and removing the items requested by the landlord. To show the tenant’s good intentions to act in good faith, the tenant provided photos which speak for themselves.

The tenant gave the following testimony. The landlord never verbally told her cleanliness was a material term of the tenancy. Since her brother passed away, many of the brother's possessions were left for her to distribute, as the administrator/executor of the brother's estate. She needed longer than 2 weeks to do.

She's removed one vehicle from the property and put insurance on the others. She has patio items, including a few bikes a freezer and patio furniture outside. The landlord said it was OK to store the freezer outside and the bikes. The 2 licensed vehicles are in accordance with the tenancy agreement, and she plans on keeping her brother's motorcycle. The tenant was never made aware the motorcycle was an issue until the landlord gave her a letter after the notice to end tenancy was issued. Same for the issues of a couch and carpet – both issues were raised after being served with the notice to end tenancy.

The landlord gave rebuttal testimony advising that while he's aware the tenant tried to clean, potential buyers and viewers of the house are going to see the freezer and other debris and be dissuaded from purchasing it. He doesn't have new photos to show what the interior of the suite looks like, so it is unknown if the tenant has cleaned it up.

Analysis

The parties agree the tenant was served with the notice to end tenancy on November 29, 2020 in accordance with sections 88 and 90 of the Act. The tenant filed to dispute the Notice on December 4, 2020, five days later.

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause, the tenant may, within ten days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files the application, the landlord bears the burden to prove on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant breached of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

First, the tenant submits that there is no material term of the tenancy that was breached, since the landlord did not specify what the material term of the tenancy was on the

notice to end tenancy. I do not agree with this reasoning, as the Act does not require a landlord to specifically point out what term of the tenancy agreement is being breached. Likewise Residential Tenancy Branch Policy Guideline PG-8 [Unconscionable and Material Terms] does not specifically state a landlord is required to identify the specific material term.

The parties signed the pre-scribed form RTB-1 tenancy agreement which contains the term 10(2)(a) which states:

Tenant's obligations:

a) The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. The tenant is not responsible for reasonable wear and tear to the residential property.

This term of the tenancy agreement reflects section 32(2) of the Residential Tenancy Act which may not be amended to change or remove this standard term [see section 14(1) Residential Tenancy Act].

Given the “details of cause” presented on the notice to end tenancy, I find that the landlord sought to end the tenancy for the tenant’s breach of the above noted term of the tenancy agreement. It is clear to me that the landlord was referring to the “*other residential property to which the tenant has access to*” when the landlord sought the tenant’s compliance in removing the unlicensed vehicles and other items stored around the property.

PG-8 provides the following guidance regarding material terms of a tenancy:

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. (emphasis added)*

Throughout the hearing, the landlord emphasized the fact that the tenant's accumulation of possessions was jeopardizing his attempts to sell the property. For example, the landlord testified that he was afraid that potential buyers could see the freezer, the bikes and vehicles and this would negatively influence their willingness to purchase it. While he mentioned the other occupant on the property was his aunt with a medical condition; cleaning the property to provide the aunt with accessibility was not the reason for ending the tenancy. The landlord made it clear throughout the hearing that the reason he wanted it cleaned up was so that it presented well for showing the house. The landlord went so far as to specifically say during testimony that, *"in trying to market the property, help my family members, I want vacant possession so the family can get rid of the property in short order."*

This testimony was followed by the landlord's grievances that the carpets and flooring would need to be replaced before they could sell it. The landlord has made it apparent to me that the reason for ending the tenancy was to facilitate the sale of the property.

Despite the fact that I have determined the landlord seeks to end the tenancy for the tenant's breach of term 10(2)(a) of the tenancy agreement; I find this term is not a material term of the tenancy agreement. I find that the landlord is attempting to end the tenancy to facilitate the sale of the property, not for breach of a material term of the tenancy agreement.

Second, the landlord gave the tenant a written notice to clean and remove personal belongings from the patio, remove excess material and possessions from the suite, clean suite and remove two uninsured vehicles from the property on November 4th. This is the "written notification" given by the landlord. The tenant was given until November 18th to *"complete these tasks in full"*.

The tenant submits that two weeks is an unreasonable timeframe for the tenant to have all these tasks completed. I find I must agree with the tenant's assessment. I have viewed the photos taken by the landlord and the tenant and I am of the opinion that it would require an organized, able bodied person a minimum of a month to accomplish the requirements imposed upon the tenant. Given the tenant's decreased capacity and increased commitments from her brother's death, I find the two week timeframe to be both unrealistic and unreasonable.

For these reasons, I cancel the landlord's One Month Notice to End Tenancy for Cause issued on November 29, 2020. This tenancy will continue until it ends in accordance with the Act.

Conclusion

The landlord's notice to end tenancy is cancelled and of no further force or effect.

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: March 01, 2021

Residential Tenancy Branch