Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47.

Both parties attended the hearing. The landlords were represented by LF (the landlord) and CI. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing both parties affirmed they understand it is prohibited to record this hearing.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

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.

Preliminary Issue – Request to Amend the Application

At the hearing the tenant requested to amend the application to obtain a monetary order for compensation for litigation costs.

Residential Tenancy Branch Rules of Procedure Rule 4.2 provides:

> In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served."

In this matter, the tenant applied to cancel the Notice. I find the landlord could not have reasonably anticipated the tenant would amend the application at the hearing to include a request for compensation for litigation costs. As such, I deny this request.

Issues to be Decided

Is the tenant entitled to cancellation of the Notice?

If the tenant's application is dismissed, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlords' obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on June 01, 2015. Monthly rent is $513.00, due on the first day of the month. At the outset of the tenancy a security deposit of $404.00 was collected and the landlords hold it in trust.

The tenancy agreement and addendum signed on May 19, 2015 were submitted into evidence:

> 41. Building House Rules. The Society may establish reasonable written rules regarding the behavior of Tenants and the use of services or common areas that the Society provides for tenants, and may revise those rules from time to time. **All such rules are a part of this agreement and must be followed by all tenants.**
>
> 47. Enforcement. **The Society may choose when and whether or not to enforce a term or part of a term of this agreement** against the Tenant or other tenants. **The decision by the Society not to enforce any term of this agreement in one instance will not prevent the Society from enforcing it at any time thereafter.**

> TENANT INSURANCE ADDENDUM:
> **Tenants agree to purchase and maintain a renter's insurance policy for the entire term of the tenancy,** including providing Landlord written copy or proof anytime upon request.
>
> (emphasis added)

The tenant said the tenancy agreement insurance addendum does not specify the insurance details.

The landlord affirmed the building house rules were attached to the tenant's rental unit door in September 2017 and September 2019. Both building house rules contain the same clause:

> 5.16 TENANT INSURANCE
> […]
> c) Tenants are responsible for insuring their own personal belongings and are required to carry adequate insurance coverage at all times for their personal property together with sufficient coverage against fire, smoke, water damage , theft and third-party personal liability. Evidence of this insurance must be provided to the Resident Manager within 10 days or taking possession of the suite. Thereafter, proof of insurance must be confirmed upon request.

The landlord testified there was a significant flood incident in another rental unit in the same building in 2018. This incident affected other tenants and the landlord decided to ask all the tenants to provide a copy of their insurance. The landlord stated he did not ask for a proof of insurance before this event but always expected the tenants to have insurance.

The landlord sent a letter to all the tenants in the rental building on March 18, 2020. The letter states:

> Due to multiple flood loss at the building in the past two years and steep rise of the building's insurance costs, the Society have to enforce a strict tenant's rental insurance policy with all the Tenants.
> The Society is asking all tenants to purchase and maintain a renter's insurance policy for the entire term of the tenancy, with a liability coverage for at least 2 million.
> Please include a copy of your rental insurance policy as proof of insurance to your upcoming annual [anonymized].
> The society is not recommending a specific insurance provider.

> Any insurance company can provide this standard rental insurance package. Please make sure the liability coverage is at least 2 million.

The landlord asked the tenant to provide a copy of the tenant's insurance in April and June 2020 and the tenant stated he will not purchase tenant's insurance.

The tenant confirmed receipt of the warning letters dated January 06 and 12, 2021. The letters state:

> January 06, 2021:
> Carrying a Tenant Insurance is also a contractual term of your tenancy agreement, a clause you signed when you firstly move into [anonymized]. We have your signed tenancy agreement attached to this letter for your reference. **We now ask that this term be fulfilled and you kindly provide a proof your insurance before January 31st, 2021.**
>
> January 12, 2021:
> **Furthering our letter dated on January 6th 2021, this is the second reminder on your tenant's rental insurance.**
> **Again, we ask you to full fill your contractual obligation that is contained in your tenancy agreement.**
> "Tenant Insurance Addendum: Tenant(s) agree to purchase and maintain a renter's insurance policy for the entire term of the tenancy, including providing Landlord written copy or proof anytime upon request."
> **Please provide your proof of insurance before 12:00 PM January 31st 2021**. You can email the document [anonymized] or you can pass it to the building caretaker [anonymized[before the above-mentioned deadline.
> **Failure to comply may affect your tenancy in the building on the grounds of "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." Without receiving required documents by the above-mentioned deadline, we will move to the next step and start proceeding at Residential Tenancy Branch. The cost of such procedure (application fee, legal, administration costs) will be the tenant's responsibility and may charge back to the tenant.**
> **Please take this matter as urgent and important.**
>
> (emphasis added)

Both parties agreed the Notice was attached to the tenant's rental unit door on January 27, 2021. The Notice is dated January 27, 2021 and the effective date is February 28, 2021. The application was submitted on February 05, 2021. The tenant continues to occupy the rental unit. The reason to end the tenancy is: "Breach of a material term of

the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The details of events are:

> Since March 2020, Landlord has been requesting Tenant to fulfill a contractual clause in the tenancy agreement by providing Landlord proof of renter home insurance for the rental unit. Such clause was included in the tenancy agreement and was signed by Tenant when firstly move in. Through the year of 2020, Landlord has been contacting tenant repeatedly for proof of insurance with no success. On January 6th 2021 and January 12th 2021, Landlord issued Tenant breach letters on
> Insurance. Up until today January 27th 2021, Landlord received no proof of insurance from Tenant. Once Tenant provides such proof of insurance and promise to carry insurance for future tenancy, Landlord will cancel the One Month Notice immediately.

The tenant affirmed the insurance addendum is not a material term of the tenancy agreement because it is not in the main body of the tenancy agreement, the landlord did not require insurance for five years and abandoned his right to terminate the tenancy for this reason (legal doctrines of estoppel and laches) and that the Act does not require the tenant to purchase insurance.

The tenant said the RTB issued decisions stating that insurance is not mandatory and that other tenants in the rental building do not have insurance.

Analysis

The tenant confirmed receipt of the Notice on January 27, 2021 and filed this application on February 05, 2021. I find that the tenant's application was submitted before the ten-day deadline to dispute the Notice, in accordance with Section 47(4) of the Act.

Section 47(1) of the Act allows a landlord to end a tenancy for cause:

> (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
> […]
> (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;

Residential Tenancy Branch Policy Guideline 8 states:

> 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.

The tenant agreed to purchase tenant's insurance when he signed the tenancy agreement and the tenant insurance addendum on May 19, 2015.

I find that the requirement of tenant's insurance in the tenant insurance addendum rather than in the main body of the tenancy agreement highlights the importance of the insurance requirement.

The landlord explained he always expected the tenant to have insurance and required proof of insurance after the significant flood incident in another rental unit in the same building.

The landlord informed the tenant in writing on January 12, 2021 that the tenant must comply with his contractual obligation and purchase tenant's insurance and that this requirement is a material term of the tenancy agreement. The landlord provided a reasonable deadline for the tenant to purchase insurance (19 days) and warned the tenant that the tenancy will be affected and "we will move to the next step and start proceeding at Residential Tenancy Branch".

Based on the landlord's testimony, the tenancy agreement insurance addendum, the March 18, 2020, January 06 and 12, 2021 letters, I find the requirement of tenant's insurance is a material term of the tenancy agreement, the tenant failed to comply with this term and has not corrected the situation within a reasonable time after the landlord gave written notice to do so.

Because the tenant stated his intention to not comply with the requirement to purchase the insurance, I find it reasonable that the landlord served he Notice prior to the deadline.

The landlord has not been enforcing his right to request a copy of the tenant's insurance. The legal doctrine of estoppel is a concept that restricts a party from relying on its full legal rights if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. In order to return to a strict enforcement of their right, the first party must give the second party notice (in writing), that they are changing their conduct and are now going to enforce the right previously waived or not enforced.

In the March 16, 2020 decision from the British Columbia Supreme Court, Guevara v. Louie, 2020 BCSC 380, Justice Sewell writes:

> [65] The following broad concept of estoppel, as described by Lord Denning in Amalgamated Investment & Property Co. (In Liquidation) v. Texas Commerce International Bank Ltd. (1981), [1982] Q.B. 84 (Eng. C.A.), at p. 122, was adopted by the Supreme Court of Canada in Ryan v. Moore, 2005 SCC 38 at para. 51:
>
> …When the parties to a transaction proceed on the basis of an underlying assumption — either of fact or of law — whether due to misrepresentation or mistake makes no difference — on which they have conducted the dealings between them — neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands.
>
> [66] The concept of estoppel was also described by the British Columbia Court of Appeal in Litwin Construction (1973) Ltd. v. Pan [1998] 29 B.C.L.R. (2d) 88 (C.A.), 52 D.L.R. (4th) 459, more recently cited with approval in Desbiens v. Smith, 2010 BCCA 394:
>
> …it would be unreasonable for a party to be permitted to deny that which, knowingly or unknowingly, he has allowed or encouraged another to assume to his detriment ..." [emphasis added]. That statement was affirmed by the English Court of Appeal in Habib Bank and, as we read the decision, accepted by that Court in Peyman v. Lanjani, [1984], 3 All E.R. 703 at pp. 721 and 725 (Stephenson L.J.), p. 731 (May L.J.) and p. 735 (Slade L.J.).

In this case, the landlord warned the tenant in writing on March 18, 2020, January 06 and 12, 2021 that he must provide the landlord proof of tenant's insurance, as agreed in the tenancy agreement.

Black's Law Dictionary defines the doctrine of laches as:

> [The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.
> …neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as a bar in court of equity.

In Canadian Western Natural Gas Company Ltd. v. Empire Trucking Parts (1985) Ltd. (1998), 1998 ABQB 463 (CanLII), 222 A.R. 255 (Q.B.) a 24-year delay, without any actual prejudice, did not amount to laches. Similarly, in Canada Trust Co. v. Lloyd, (1968) 1968 CanLII 95 (SCC), S.C.R. 300, the Supreme Court of Canada held that a 43-year delay, without any prejudice, was not determinative of laches.

I find the landlord's delay in requesting proof of tenant's insurance did not cause prejudice to the tenant, as the tenant agreed in writing to purchase and maintain insurance and the landlord always expected the tenant to have insurance. The Act does not prohibit a tenancy agreement clause requiring the tenant to purchase insurance.

I further find the tenancy addendum, the building house rules issued in September 2017 and September 2019, and the letters dated March 18, 2020, January 06 and 12, 2021 are clear and the tenant did not need any additional information or details to purchase insurance.

The tenant submitted into evidence previous RTB decisions. Per section 64(2) of the Act, each case is decided based on the unique evidence and testimony given and I am not bound by previous RTB decisions.

Based on the above reasons, I find the landlords are entitled to end this tenancy, pursuant to section 47(1)(h) of the Act.

I find the form and content of the Notice is valid pursuant to section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date of the Notice, states the grounds for ending the tenancy and is in the approved form.

Pursuant to section 55(1)(b) of the Act, the landlords are entitled to an order of possession effective two days after service on the tenant.

I warn the tenant that he may be liable for any costs the landlords incur to enforce the order of possession.

Conclusion

I grant an order of possession to the landlords effective two days after service of this order. Should the tenant 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: May 13, 2021

Residential Tenancy Branch