Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Haven Management Co. Ltd. dba Haven Properties and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

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 tenants applied for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. Tenants KK and AD were assisted by advocate MB (the tenant). The landlord was represented by property manager AG. 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 the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000."

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 – Correction of Tenant AD's Name

At the outset of the hearing tenant AD corrected his last name. Pursuant to section 64(3)(a) of the Act, I have amended the tenants' application.

Issues to be Decided

Are the tenants entitled to:
1. Cancellation of the Notice?
2. An authorization to recover the filing fee?

If the tenants' 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 claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the causes to end the tenancy.

Both parties agreed the tenancy started on November 15, 2015. Monthly rent is $1,200.00, due on the first day of the month. At the outset of the tenancy a security deposit of $600.00 was collected and the landlord holds it in trust.

The tenancy agreements signed on October 22, 2014, November 11, 2015 and June 12, 2017 indicate rent includes parking for 2 vehicles. The latest tenancy agreement states:

> 30. VEHICLES AND BICYCLES. Only the number of vehicles approved in writing by the landlord may be parked or stored on the residential property. Motor vehicles must be operable, currently licensed and insured for operation, and must not leak fluids or be repaired on the residential property.

Both parties agreed the rental unit is a 4-plex, the tenants rent the upper-right unit, the tenants have exclusive access to the one-car garage and the driveway has parking space for two vehicles.

Both parties agreed the Notice was served and the tenants received it on April 19, 2021. The reasons to end the tenancy are:

- The tenant or a person permitted on the property by the tenant has
    - Significantly interfered with or unreasonably disturbed another occupant or the landlord.
- 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 the Notice are:

> The tenant is assigned two parking spots out of the three spots available(one in the garage and the other in the driveway in front of the garage). Two for the upper unit and one for the lower unit. The upper tenant has continued to park in the spot assigned to the lower unit. The lower unit is currently under renovation and the tenant won't allow the owner to park his vehicle in the lower unit spot so he can do the renovations.

The Notice is dated April 16, 2021 and the effective date is May 22, 2021. The tenants continue to occupy the rental unit. The tenants submitted this application on April 23, 2021.

The landlord affirmed the tenants can park one car in the garage and the second car on the driveway. The second parking space on the driveway is for the lower unit tenant. The landlord was aware that the tenants were parking their two vehicles on the driveway since 2014 and did not object to this because the lower unit tenant did not have a vehicle. The lower unit tenant moved out in June 2020, the lower unit renovation is complete, and the landlord will rent it to a new tenant with the parking space on the driveway.

The landlord submitted into evidence an email related to parking issues:

> 8) As for the parking space issues, we'll probably have to go through arbitration because as we've stated before, our parking arrangements are the same as next door's. When we moved in here, both of the upper units were available to rent out and we were told that both units had 2 parking sports AND a garage. The downstairs tenant on the other side has always had a working vehicle, and the upper unit has always had 2 vehicles. All 3 of these vehicles have always been parked in the driveway. For our side, [lower unit tenant] did not have a vehicle, but [lower unit tenant], who lived with [lower unit tenant] did. [lower unit tenant] never requested use or mentioned anything about the driveway. He always parking his vehicle on the grass.

The tenant affirmed the tenancy agreements do not indicate where the tenants can park their vehicles and the tenants are only parking the two vehicles authorized in the latest tenancy agreement. Both the tenant and tenant KK testified the landlord verbally authorized the tenants to use the garage as storage in 2014.

Analysis

A tenant may dispute a notice to end tenancy for cause pursuant to section 47(4) of the Act. The tenants were served the Notice on April 19, 2021 and filed this application on April 23, 2021. I find the tenants disputed the Notice within the time frame of section 47(4) of the Act.

The landlord issued the notice pursuant to section 47(1)(d)(i) and (h) and alleged the tenants are significantly interfering with or unreasonably disturbing the landlord and other tenants and breaching a material term of the tenancy agreement.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

Section 6(3) of the Act states:

> A term of a tenancy agreement is not enforceable if:
> (a)the term is inconsistent with this Act or the regulations,
> (b)the term is unconscionable, or
> (c)the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Section 47(1)(d)(i) of the Act states:

> (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
> (d)the tenant or a person permitted on the residential property by the tenant has
>
> (i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

Based on the three tenancy agreements and the testimony offered by both parties, I find the tenancy agreements did not specify where the tenants can park their two vehicles.

Per section 6(3)(c) of the Act, a term is not enforceable if the term is not expressed in a matter that clearly communicates the rights and obligations. Furthermore, the landlord did not dispute the tenant's testimony that he authorized them to use the garage as storage in 2014. As such, I find that the tenants are not interfering or disturbing the landlord when they park their two vehicles on the driveway.

Based on the above, I find the landlord failed to prove, on a balance of probabilities, that the tenants are significantly interfering with or unreasonably disturbing another occupant of the landlord. Thus, the landlord cannot end the tenancy under section 47(1)(d)(i) of the Act.

Section 47(1)(h) of the Act states:

> (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
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> (h) The tenant:
>
> (i)has failed to comply with a material term, and
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> (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 defines a material term and sets conditions to end a tenancy because of a breach of a material term. It 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.
> **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:**
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> - 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

(emphasis added)

Based on the undated email submitted into evidence by the landlord and the landlord's testimony, I find the email was sent by the tenants to the landlord and the landlord did not inform the tenants in writing that there is a breach of a material term and that the problem must be fixed by a reasonable deadline.

As such, per section 47(1)(h) of the Act, I find the landlord cannot end the tenancy for failure to comply with a material term.

Thus, I find the landlord failed to prove, on a balance of probabilities, the grounds of the Notice. Accordingly, the Notice dated April 16, 2021 is cancelled and of no force or effect.

As the tenants are successful with their application, pursuant to section 72 of the Act, I authorize them to recover the $100.00 filing fee. I order that this amount may be deducted from the next rent payment.

Conclusion

The One Month Notice dated April 16, 2021 is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a) the tenants are authorized to deduct $100.00 from the next rent payment to recover their filing fee.

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: June 23, 2021

Residential Tenancy Branch