



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47; and
- authorization for the recovery of the filing fee for this application from the landlord pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to the recovery of the filing fee for this application from the landlord?

Background and Evidence

RM gave the following testimony for the landlords. RM testified that this tenancy began on February 1, 2010. RM testified that the tenant has a history of noncompliance when the landlord makes requests. RM testified that the tenant used a common area to store his own personal belongings. RM testified that the tenant also blocked off access to the hot water tank and furnace causing an impediment and a risk to the landlords' property. RM testified that the tenant was given three written notices to please comply and remove his personal items from those areas.

RM testified that the first notice was given on May 11, 2020, the second on February 17, 2021 and the final one on June 14, 2021. In the June 14, 2021 letter, the landlord requested that the tenant remove all personal items from the common areas and from blocking the hot water tank and furnace area as the plumbers would be attending on the morning of June 18, 2021 to install a new hot water tank and furnace. RM testified on the morning of June 18, 2021 the tenant had still not complied and that he issued a One Month Notice to End Tenancy for Cause pursuant to section 47 of the Act on that day for the following reason:

Landlord's notice: cause

47 (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;

RM requests that the tenancy end and that an order of possession be granted.

DK gave the following submissions on behalf of the tenant. DK submits that the tenant did move the items on June 18, 2021, albeit late. DK submits that the tenant is now well aware that he must comply in a timely fashion to the requests of the landlord. DK submits that although the landlord gave a notice on June 14, 2021, the notice does not state that noncompliance could result in the end of the tenancy.

Analysis

When a landlord issues a notice under Section 47 of the Act they bear the responsibility in providing sufficient evidence to support the issuance of that notice. RM has provided some evidence of the tenants' noncompliance of certain requests. RM submits that he gave the tenant three written notices to remove items in the common area, and when the tenant didn't comply in time, a material breach of the tenancy agreement occurred. RM submits that the June 14, 2021 letter is sufficient of his intention to end the tenancy if the tenant doesn't comply.

Residential Tenancy Policy Guideline 8 addresses the issue as follows:

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.***

I find that the June 14, 2021 letter is not sufficient to meet the above criteria as it does not state, that if the tenant doesn't comply, the landlord would seek to end the tenancy. In addition, the landlord has not provided sufficient evidence to show that this was a breach of a material term. The first request was made on May 11, 2020 with the third request being made over a year later. The landlord has not provided sufficient evidence to show that this action requested was so critical to the continuance of the tenancy. Based on all the above, I find that the landlord has not provided sufficient evidence to prove that the tenant has breached a material term of the tenancy.

The One Month Notice to End Tenancy for Cause, dated June 18, 2021 is cancelled, it is of no effect or force. The tenancy continues.

The tenant is entitled to a **one time** rent reduction of \$100.00 for the recovery of the filing fee.

Conclusion

The notice to end tenancy is cancelled. The tenancy continues.

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 18, 2021

Residential Tenancy Branch