



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with a tenant's application to cancel a One Month Notice to End tenancy for Cause ("1 Month Notice") dated June 30, 2021.

Both the landlord and the tenants appeared for the hearing. The parties were affirmed and the parties were ordered to not record the proceeding. Both parties had the opportunity to make relevant submissions in support of their respective position pursuant to the Rule of Procedure.

Preliminary and Procedural Matters

I confirmed the tenants served their proceeding package upon the landlord, in person on July 27, 2021. The tenants served their evidence by giving it to the landlord's wife on October 14, 2021. The landlord confirmed he received the tenant's evidence package from his wife and he had an opportunity to review it and prepare a response.

The landlord provided an evidence package to the tenants by giving it the tenant's grandson on October 21, 2021. The tenants confirmed they received the landlord's evidence package from their grandson and they had an opportunity to review it and prepare a response.

Although service upon the landlord's wife and the tenant's grandson may have not been in compliance with service requirements, considering both parties acknowledged receipt of the packages and sufficient opportunity to review and prepare a response to the packages, I was satisfied there would be no prejudice in deeming the parties sufficiently served pursuant to the authority afforded me under section 71 of the Act. Neither party objected to being deemed served. Accordingly, I deemed the evidence packages to be sufficiently served and I admitted them for consideration in making my decision.

The parties requested that the style of cause be amended, by consent, to remove the tenant's grandson as a named tenant. All parties were in agreement that the tenant's grandson is not a tenant. The application was amended accordingly.

I noted that I did not have a copy of the subject 1 Month Notice. The tenants acknowledged they may have failed to provide it. The landlord acknowledged that he may not have provided it either.

Under Rules 2.5 and 3.1 of the Rules of Procedure, a tenant disputing a notice to end tenancy is to provide a copy of the notice to end tenancy and the tenants failed to do so. However, in order for me to consider granting an Order of Possession to the landlord under a tenant's application, as provided under section 55(1) of the Act, I must be satisfied that a valid and enforceable notice to end tenancy has been served upon the tenant. The parties indicated they could provide a copy of the notice to end tenancy for my review and I ordered each of the parties to do so during the teleconference call. The landlord was first to upload a copy and the tenant was taking longer to accomplish this so I read from the landlord's copy aloud and the tenants confirmed the copy provided by the landlord was an identical copy of the 1 Month Notice they received. Therefore, I have relied upon the 1 Month Notice provided by the landlord in making this decision.

After both parties had an opportunity to be heard once, but before the tenants could call witnesses, the hearing time had expired. I asked the landlord if he would be requesting an adjournment so that he could respond to the tenant's differing version of events or if he would prefer that I make a decision based on what I had been presented thus far. The landlord responded that he did not want an adjournment and that I should proceed to make a decision based on what I had heard thus far.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled, as requested by the tenants? If the 1 Month Notice is upheld, is the landlord entitled to an Order of Possession?

Background and Evidence

The tenants completed a tenancy application form on February 24, 2014 and the parties agreed upon the terms of tenancy by way of an oral agreement only. The tenancy started in March 2014 and the tenants paid a security deposit of \$700.00. The tenants are required to pay rent of \$1400.00 on the first day of every month. The rental unit is described as the three bedroom upper level of one side of a duplex. Each side of the duplex have illegal basement suites for a total of four rental units on the property owned by the landlord. Each unit is tenanted.

On June 30, 2021 the landlord placed a One Month Notice to End Tenancy for Cause ("1 Month Notice") by the tenant's mailbox. The tenants found the 1 Month Notice on July 1, 2021 and filed to dispute it within the time limit for doing so.

The 1 Month Notice has a stated effective date of July 31, 2021 and indicates the following reasons for ending the tenancy (as indicated with an "X" in the applicable boxes):

Reason for this One Month's Notice to End Tenancy: (check all boxes that apply)

- ☐ Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.
- ☐ Tenant is repeatedly late paying rent
- ☒ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
 - ☒ significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - ☒ seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - ☐ put the landlord's property at significant risk
- ☐ Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.
- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
- ☒ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord.
- ☒ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.
- ☐ Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- ☐ Tenant has not done required repairs of damage to the unit/site/property/park
- ☒ Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- ☐ Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.
- ☐ Rental unit/site must be vacated to comply with a government order
- ☐ Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.
- ☐ Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.
- ☐ Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.
- ☐ Tenant's rental unit/site is part of the tenant's employment as a caretaker, manager or superintendent of the property, the tenant's employment has ended and the landlord intends to rent or provide the rental unit/site to a new caretaker, manager or superintendent.

In the Details of Cause space on the 1 Month Notice, the landlord wrote the following details in support of ending the tenancy for cause:

Details of Causes(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s): Entering another tenants suite without their permission resulting an illegal activity, violates other tenant safety, security and privacy. Tenancy was for two but more people live when utilities are included. Tenant has brought a dog when there was no written intent to have an extra pet was submitted and didn't have the permission to do so. Tenant has only one parking under the carport but has taken more spots in the front and even at the back parking unlicensed vehicle and does curbing and buying/selling at the premise.

The landlord described an unlawful entry of the basement suite by the tenant on June 27, 2021 as being the main reason for seeking to end the tenancy and this event corresponds to the first four reasons for ending the tenancy on the 1 Month Notice (all reasons indicated with the exception of breach of a material term).

1. Entry into basement suite

It is undisputed that the tenant entered the basement suite on June 27, 2021 and the electrical panel that services the renal unit is located in the basement suite.

Below, I have summarized the parties' differing version of events with respect to the circumstances surrounding the tenant's entry into the basement suite on June 27, 2021.

Landlord's version of events

The tenant called the landlord to inform him an electrical breaker had tripped and it needed to be re-set. The tenant informed the landlord that it was a kitchen plug that was no longer working, and this included the plug for the fridge, and the tenant was concerned the food would spoil. According to the landlord, the tenant did not inform him that he had plugged in an air conditioner. The tenant indicated to the landlord that the basement suite tenant was away and asked the landlord if he had a key so the landlord could enter the basement suite unit and re-set the breaker. The landlord responded to the tenant that he would attend the property in a couple of hours. Shortly after that, the tenant reported to the landlord that he had managed to find a way to enter the basement suite and he had re-set the breaker.

On June 28, 2021 the basement suite tenant contacted the landlord and was very mad that the tenant had entered his unit without his permission.

The landlord is of the position that there was not an emergency that required the tenant to enter the basement suite. If the fridge was without power, the tenant could have used an extension cord to provide power the fridge and wait for the landlord to respond to the issue.

I asked the landlord whether he would consider a warning to the tenant in recognition of the long tenancy and this one unlawful entry. The landlord responded that he would have considered a warning except there are other issues with the tenancy, as described further below.

Tenant's version

The tenant submitted that June 27, 2021 was during the "heat dome" and the rental unit was approximately 40 degrees and the female tenant suffers from a medical condition that means she cannot get overheated. As such, the tenants obtained a portable air conditioner and when they plugged it in it tripped the electrical circuits for half the rental unit. The tenants considered the loss of electricity and the inability to use the air conditioner to be an emergency situation for the health of the female tenant.

The tenant testified that he telephoned the landlord at approximately 9:30 a.m. to report the situation and the landlord indicated he did not have a key for the basement suite. Then the landlord said he would attend the property late that evening, which the tenant considered too late.

While the tenant was on the phone with the landlord, he told the landlord he would check to see if he could find a way to enter the basement suite. The tenant found an unlocked window and when he told the landlord this the landlord said he could enter the basement suite as it would save the landlord a trip to the property. The tenant entered the basement suite and re-set the breaker, then locked the window on his way out. The tenant stated he could call his brother and another tenant of the property as a witness in support of his version of events.

When the basement suite tenant returned to the property, the tenant told him he had entered and the basement suite tenant was very mad about it.

The tenant indicated he his willing to abide by any order to not enter the basement suite again; however, the tenant pointed out that there needs to be a way to re-set a breaker for his unit without having to wait for the landlord to enter the basement suite.

2. Breach of material term

The landlord submitted that other reasons for ending the tenancy are due to the tenant's violation of their terms of tenancy, as follows:

- The tenants permitted their grandson to move in with them even though the tenancy application indicated that there would be only two occupants
- The tenants permitted their grandson to bring his dog with him to reside at the property when the landlord had only given permission for the tenants to have a cat

- The tenants have parked multiple vehicles on the property, including an uninsured vehicle and the tenant has sold cars which the landlord described as “curbing”.

The landlord acknowledged that he did not give the tenants a written letter to put the tenants on notice that they were in breach of a material term of their tenancy agreement with the exception of emails sent in December 2020 with respect to parking of the uninsured vehicle in the back yard.

I did illicit responses from the tenants as I informed the parties that the landlord must first issue a written breach letter to a tenant before issuing a 1 Month Notice for breach of a material term.

3. Other issues

The landlord wanted to raise other issues with respect to the tenancy and in support of ending the tenancy; however, I did not permit the landlord to do so as it would be prejudicial and unfair without having first put the tenants on notice of other reasons for ending the tenancy by way of the 1 Month Notice. The landlord’s reasons for ending the tenancy were limited to those he described in the Details of Cause on the 1 Month Notice.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

The landlord’s burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

Upon consideration of everything presented to me, I provide the following findings and reasons.

1. Entry into basement suite

It is undisputed that the tenant entered the basement suite, which was rented to a different tenant, on June 27, 2021 and the tenant did not have the consent or permission of that tenant to do so.

Every tenant has the right to quiet enjoyment of their rental unit under section 28 of the Act and this includes:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance; and
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

[My emphasis underlined]

The basement suite is a tenanted unit and the tenant(s) of that unit are entitled to the rights and protections of section 28. As such, no person, except the landlord, has the authority to enter their unit under the Act. Any other person who enters would require the consent, permission or invitation of the tenant renting the suite.

The tenant pointed to an emergency situation involving his wife's health and the heat as being justification. The Act does contemplate the need to enter a rental unit in an emergency situation; however, this is found under a landlord's right to enter a rental unit, under section 29(1)(f) of the Act, as reproduced below:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

...

(f) an emergency exists and the entry is necessary to protect life or property.

There is no provision or allowance under the Act for one tenant to enter another tenant's rental unit, even in an emergency. As such, where a true emergency exists, it would upon the tenant to request the landlord enter another tenant's unit or the tenant may call emergency services (fire, police, ambulance), as appropriate in the circumstance. Alternatively, the tenant would have to obtain the consent or permission of the tenant renting the unit. In this case, the tenant did not have the permission of the tenant renting the basement suite to enter the basement suite and I find the tenant did not have a right under the Act to enter the basement suite.

While the tenant pointed to his wife's medical condition and the need for air conditioning on that hot day, I note the tenant did not explain why his wife could not have waited at a cooling centre or other air conditioned location until such time the breaker was re-set. In any event, the parties provided different version of events as to the landlord's involvement in the tenant's entry into the basement suite. The landlord essentially took the position he was not involved and did not give permission for the tenant to enter the basement suite; whereas, the tenant testified the landlord was involved when he was entering while on the phone with him and the landlord gave consent for entry into the basement suite. I find both scenarios equally probable but I give the tenant the benefit of the doubt since the landlord bears the burden of proof and considering the tenant was in a position to call witnesses to support his version of events had the hearing time not expired.

Despite my finding that the tenant had no right under the Act to enter the basement suite, I decline to end the tenancy due to this one violation of the Act when I consider the tenant's testimony that this was done with the consent of the landlord and it would be unreasonable for the tenant to suffer all of the consequences of a poor decision made by both parties. Rather, I find it more appropriate to issue orders to both parties with a view to preventing such action in the future.

I order the following effectively immediately upon receipt of this decision:

- 1) The tenants must not enter the basement suite below their unit, or any other unit on the residential property, unless the tenants are given express consent or permission to enter by the tenants of that unit.**
- 2) For the remainder of the tenancy and until such time there are separate electrical panels in the rental units at the residential property, if ever, in the**

event an electrical beaker trips, the tenant is to notify the landlord and the landlord must respond sufficiently and appropriately in a timely manner to rectify the situation.

Should the tenants violate my order #1 above, the tenancy may be ended for failure to comply with an order of the Director, as provided under section 47(1)(l) of the Act.

Should the landlord fail to comply with my order #2 above, the tenants may seek additional remedies my making another Application for Dispute Resolution.

2. Breach of a material term

Section 47 of the Act provides that a landlord may end a tenancy where:

(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

[My emphasis underlined]

Residential Tenancy Policy Guideline 8. *Unconscionable and Material Terms* provides policy statements and information concerning material terms, 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.

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.

[My emphasis underlined]

In this case, the landlord acknowledged that he did not give the tenants any written notice concerning breach of a material term with respect to the number of occupants in the rental unit or a dog in the rental unit.

As for parking, the landlord sent emails to the tenant in December 2020; however, at that time email was not a permissible method of serving a document. Further, the email does not contain the information described in the policy guideline that I have underlined above.

In light of the above, I find the landlord was not in a position to issue a 1 Month Notice for breach of a material term as he had failed to issue written breach letters first. In the absence of written breach letters, I find it unnecessary to further consider whether the terms were material terms.

Taking all into account, I grant the tenant's application to cancel the 1 Month Notice dated June 30, 2021 and the tenancy continues at this time. However, I have issued orders to both parties with this decision that apply for the remainder of the tenancy.

During the hearing, I limited the landlord's reasons for ending the tenancy to those identified in the Details of Cause on the 1 Month Notice. Should the landlord be of the position he has cause for ending the tenancy for reasons other than those I have addressed in this decision, the landlord may issue another 1 Month Notice.

Conclusion

The 1 Month Notice dated June 30, 2021 is cancelled and the tenancy continues at this time.

I have issued orders to both parties with this decision.

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: November 03, 2021

Residential Tenancy Branch