Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on November 18, 2021. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause (the Notice) pursuant to section 47

Both parties attended the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed they understood rule 6.11.

The Landlord confirmed receipt of the Tenants' application and Notice of Hearing. The Landlord also confirmed receipt of the Tenants' second package which consisted of documentary evidence. The Tenants stated they left it, in person, with the Landlord's agent at the Landlord's place of business on November 3, 2021. The Landlord confirmed receiving it but was unclear when. I find the Tenants sufficiently served the Landlord with the application, evidence, and Notice of Hearing.

The Landlord stated he sent his evidence, by registered mail, on November 12, 2021. The Tenants deny getting this package and stated that it was sent to them too late. As per Rule of Procedure 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. The Landlord's evidence was late, and not received, and given the lack of

evidence showing the Landlord served the Tenant in compliance with the Act and the Rules, I find their evidence is not admissible and will not be considered further.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
    - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties agree that this tenancy started sometime in April 2018. Initially, the Tenants rented part of a house, with the other distinct part being rented separately to a different tenant under a different agreement. Sometime in the following year, the municipality discovered that the Landlord had a non-compliant suite (the unit abutting this rental unit, which was being rented to the other Tenant). Following this, the municipality asked the suite to be decommissioned, but since the Tenant was already moving out of that unit, the Landlord did very little to facilitate formal decommissioning. It was around this time that the Landlord boarded up a shared interior door, to prevent the unpermitted space from being used, and also when the Tenants lost access to laundry facilities in that area.

Subsequently, the Tenants removed the door, and restored access to the area that was previously rented to the other Tenant, and they currently have some furniture stored in that area. The Tenants stated they don't really need this space, and are happy to remove their belongings if necessary, but need some access to use their laundry. The Tenants stated that the have had access to this secondary space for over a year, and the Landlord never had an issue with any of this until after the Tenants were successful in a monetary claim against the Landlord in June of 2021. The Tenants feel the Landlord is being retaliatory and they deny that any of these issues were ever a problem such that the Landlord has any grounds to end the tenancy for Cause.

The Landlord issued the Notice for the following reasons:

- *Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk.*

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

The Tenant acknowledged receiving the Notice on or around July 22, 2021. Under the "Details of Cause" section on the Notice, the Landlord cited 3 different notices of inspection that were given to the Tenants on June 12, 2021, June 28, 2021, and July 13, 2021, and on each occasion, the Landlord stated he was prevented from doing the inspection because the Tenants did not answer the door. The Landlord further noted that the inspections were done to ensure the Tenants re-installed a door that had been removed in the house, to remove personal belongings from the Landlord's portion of the property, and to ensure all vehicles the belong to the Tenants are either insured or operative.

The Landlord stated that he wants to end the tenancy for 3 main reasons. The Landlord stated that the first reason is because he tried to inspect the unit multiple times in June and July of 2021, and the Tenants failed to answer the door. The second reason was because the Tenants breached a material term of the tenancy agreement, by taking over part of the property that they were not entitled to use. The Landlord stated the third reason was because the Tenants had uninsured vehicles on the property, which is a violation of the municipal bylaws and a breach of a material term.

The Landlord pointed to term #64 in the tenancy agreement, which shows that the Tenants should be required to pay extra if they want to use additional space, whether it be the yard or more space in the house that was previously not included.

The Tenants stated that the timing of this Notice to End Tenancy is highly suspicious, as the Landlord issued it in the weeks following the Tenants successful monetary claim against him. The Tenants stated that the Landlord has been aware of the fact that the interior door has been removed from inside the house, and that they have been accessing this extra space for over a year, yet the Landlord did not take issue with this until losing at arbitration. The Tenants also stated that they were not preventing the Landlord from doing inspections, and the Landlord could have come and done the inspections, with proper notice, even if they weren't there.

The Tenants stated that they never formally gave the Landlord their email address as a means for service, and would prefer this type of notice to enter to be in writing. The

Tenants feel they are being unfairly punished because the Landlord was forced to decommission one of the rental units adjoining the house which the Tenants rent.

Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

I have reviewed the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the *Act*. I note the Tenant received the Notice on or around July 22, 2021, and applied to dispute it on July 29, 2021.

First, I turn to the second ground the Landlord identified on the Notice which is that the Tenants have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. I find the Landlord did a poor job explaining which material term of the tenancy agreement was breached. The Landlord pointed out that the Tenants have violated the tenancy agreement by having uninsured vehicles on the property, and by using space they are not paying for. However, none of these terms were explicitly identified as "material terms" on the tenancy agreement, and the Landlord did a poor job explaining why they would be material terms. Further, there is a poor record as to what was told to the Tenants about any potential breaches of the tenancy agreement, leading up to the Notice.

I turn to Residential Tenancy Policy Guideline #8 which speaks to "Material Terms":

> *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.*

There is insufficient evidence to show that the Landlord ever communicated that any potential breach of the tenancy agreement is "material" to the tenancy agreement. I find the Landlord has failed to sufficiently demonstrate that the Tenants breached a material

term of the tenancy agreement, and even if there was a material breach, there is insufficient evidence that this was properly communicated in a manner which would enable the Landlord to end the tenancy for this reason.

With respect to the first ground selected on the Notice, I note it refers to the Tenants putting the Landlord's property at significant risk. I accept that the parties have a degrading and dysfunctional relationship. However, I find there is insufficient evidence that the Landlord's property is at significant risk for any of the issues raised at the hearing.

I note the Landlord is entitled to do inspections in accordance with the Act, provided proper Notice is given. I suggest the Landlord use written notice, rather than via email, given there is no evidence the parties agreed to use email as a means for service. As long as the proper Notice has been given to enter or inspect the unit, the Landlord may conduct these inspections in the absence of the Tenants. However, the Tenants may choose to be there if they wish. Regardless, I do not find that, by ignoring requests for inspection, that this placed the Landlord's property at significant risk. Further, there is insufficient evidence that the cars stored on the property, or the issue with the door to the adjoining area is such that they represent a significant risk to the Landlord's property.

I encourage the parties to use written and verifiable methods of communication, going forward, and to attempt to resolve matters involving the use of space on their own, going forward, before applying for dispute resolution. I reminded the parties that they still must respect each others' rights and obligations under the Act, and must not obstruct or impede any legal rights or entitlements under the Act or the Tenancy Agreement.

Overall, I find that the landlord has not provided sufficient evidence to support the reasons to end the tenancy; therefore, the Tenant's application is successful and the Notice received by the Tenant on July 22, 2021, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenants were successful with this application, I grant the recovery of the filing fee against the Landlord. The Tenants may deduct the amount of $100.00 from 1 (one) future rent payment.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

The Tenant may deduct the amount of $100.00 from one (1) future rent payment.

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 18, 2021

Residential Tenancy Branch