



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lynn Valley Lions Housing Society and [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice").

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

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

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree about the factual background. This periodic tenancy originally began in 2009. The rental unit is a subsidized housing unit with a requirement under the tenancy agreement that the tenant carry renter's liability insurance. The previous policy of insurance for the tenant expired and the landlord issued correspondence by email on July 15, 2021 requiring the tenant to provide a current copy of the insurance in place. The landlord subsequently issued written Notice requiring proof of insurance on July 22, 2021 stating that the tenant is in breach of the tenancy agreement.

The tenant says they did not have access to internet and did not receive earlier correspondence by email. When informed of the breach the tenant informed the landlord they would obtain insurance and subsequently arranged for a neighbor to send email correspondence on August 2, 2021 informing them that it would be prepared by August 6, 2021. The landlord did not deem this timeline acceptable and issued email correspondence on August 2, 2021 informing the tenant that the insurance was due on the date the previous policy expired on July 4, 2021 and they were given until end of day August 3, 2021 to provide a copy of the valid insurance policy.

The tenant failed to provide a copy of the insurance on August 3, 2021 and the landlord issued a 1 Month Notice on August 5, 2021. The tenant obtained insurance on August 6, 2021.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the present case the landlord submits that the tenants breached a material

term of the tenancy agreement by failing to have renters liability insurance in place from July 4, 2021 to August 6, 2021.

Residential Tenancy Policy Guideline 8 defines a material term as a term that is so important that the most trivial breach of that term gives the other party the right to end the agreement.

Based on the evidence of the parties I am satisfied that the tenant carrying valid insurance for the rental unit is a material term of this tenancy agreement. The parties agree that this is an essential element of the tenancy and one which both parties understood to be a significant issue of grave consequence.

Guideline 8 expands on how a tenancy may end where there is a material breach stating:

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.

Under the circumstances, while I accept the evidence that maintaining valid policy of insurance is a material term of this tenancy and that it was breached for a period of approximately one month when the tenant failed to have proper insurance in place, I am not satisfied that the landlord informed the tenant of the breach nor did they provide a reasonable timeline for rectifying the breach.

I find insufficient evidence that email was an accepted method of service of documents upon the tenant. The evidence of the parties shows that the landlord previously issued correspondence by letters to the tenant and was doing so as recently as June 17, 2021.

The tenant gave undisputed testimony that they had limited access to internet services and email and had informed the landlord they were unable to access email correspondence. The evidence demonstrates that the tenant arranged for a friend to communicate with the landlord by email on August 2, 2021. The landlord issued email correspondence to the tenant at their email address on August 2, 2021 giving them until August 3, 2021 to rectify the breach of the agreement.

I am not satisfied that the landlord's email correspondence of July 15, 2021 or August 2, 2021 were received by the tenant nor do I find sufficient evidence to establish that email was an acceptable manner of serving documents. I further find that the document dated July 22, 2021 indicates that the landlord believes a breach of a material term has occurred but does not provide a deadline by which the breach may be rectified. The document does not state that the tenancy will end if the tenant does not rectify the breach by obtaining valid insurance and simply requests, "please satisfy this request quickly so you do not remain in breach of your Tenancy Agreement". I find that the form and contents of the document do not meet the requirements articulated in Policy Guideline 8 as it does not state the consequences of failing to remedy the breach nor does it provide a reasonable timeline to correct the breach.

I find the email correspondence of August 2, 2021, even if it were served on the tenant, which I found insufficient evidence to establish, gives a timeline of 1 day which I find to be unreasonable.

I find insufficient evidence that the email correspondence from the landlord was received by the tenant to make them aware of the breach. I find the document of July 22, 2021 to not provide a deadline or set out the consequences for failing to rectify the breach. In these circumstances I find that the tenant was not sufficiently made aware of the breach of the material term prior to the issuance of the 1 Month Notice. I therefore find that there was insufficient basis for the notice and allow the tenant's application to cancel the notice. This tenancy continues until ended in accordance with the Act.

Conclusion

The tenant's application is allowed. The 1 Month Notice of August 5, 2021 is cancelled and of no further force or effect.

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: December 17, 2021

Residential Tenancy Branch