Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WIDSTEN PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

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 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

While the landlord's agent, SW, attended the hearing by way of conference call, the tenant did not. At the outset of the hearing, I informed the landlord that I would wait until 11:11 a.m. to enable the tenant to participate in this scheduled hearing for 11:00 am. During the 11:00 a.m. hearing I confirmed from the online teleconference system that the landlord's agent and I were the only ones who had called into this teleconference. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing.

The landlord was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The landlord confirmed that they understood.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any submissions from the applicant in this hearing, I order the tenant's entire application dismissed without liberty to reapply.

The landlord provided proof of service in their evidentiary materials to show that the tenant was served with their evidence package on December 8, 2021 by way of registered mail. In accordance with sections 89 and 90 of the Act, I find the tenant deemed service with the landlord's package on December 13, 2021 5 days after mailing.

The landlord testified that they had served the tenant with a 1 Month Notice on August 18, 2021, by way of posting the 1 Month Notice on the tenant's door. In accordance with sections 88 and 90 of the *Act,* I find the tenant deemed served with the 1 Month Notice on August 21, 2021. 3 days after posting.

The landlord confirmed the proper legal name of the landlord in the hearing. I am satisfied that the tenant's application contained a typographical error in the landlord's legal name, and accordingly, I amend the landlord's name on the application to reflect the proper legal name of the landlord.

Issues to be Decided

Are the landlords entitled to an Order of Possession for cause?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications before me and my findings around it are set out below.

This month-to-month tenancy began on August 1, 2013, with monthly rent currently set at $1,758.00, payable on the first of the month. The landlord collected a security deposit in the amount of $879.00, and a pet damage deposit in the amount of $439.50, which they still hold.

The landlord served the tenant with a 1 Month Notice on the following grounds:

i) Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so;
ii) Tenant has not done required repairs of damage to the unit/site/property/park.

The landlord served the tenant with the 1 Month Notice after the tenant removed carpet without approval from the landlord. The tenant was served with a written warning on July 20, 2021 that on the last routine inspection it was noted that the carpet on the front entry stairs had been removed.

The landlord noted that the tenancy agreement clearly states that “tenants agree not to alter or decorate their dwelling without first obtaining Owner’s written permission”, and the tenant was given until August 1, 2021 to make arrangements to restore the carpet, or provide proof of booking with a carpet install company. The notice also notes that failure to comply may result in a one month notice for breaching a material term of the tenancy agreement.

The landlord confirmed that the tenant eventually replaced the carpet, but did not receive confirmation until September 21, 2021, after the landlord had served the tenant with a 1 Month Notice, and after the application was filed for an Order of Possession. The landlord is requesting an Order of Possession as the tenant breached a material term, and did not correct the breach within the required timeline.

Analysis

Section 55(1) of the *Act* reads as follows:

> **55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
>
> (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
>
> (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 52 of the *Act* states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Although the tenant’s application was dismissed in this hearing, in order for an Order of Possession to be granted, the 1 Month Notice must still be valid. I note that the landlord served the tenant with the 1 Month Notice on two grounds. One of the grounds was that the tenant had breached a material term of the tenancy agreement, and did not correct this breach within a reasonable amount of time after being given written notice to do so.

In this case, the landlord confirmed that the tenant did correct the breach, but not within the required timeline.

A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. As noted in RTB Policy Guideline #8, 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. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

> *To end a tenancy agreement for breach of a material term the party alleging a breach…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…*

In regards to the landlord's allegation that there has been a breach of a material term of the tenancy agreement, although I find that the tenant may have breached a term of the tenancy agreement, I do not find that the landlord has established how this term is material. Although there may be circumstances where an unauthorized alteration may be serious enough to be constituted a material breach, in this case, the alteration involved the removal of carpet. I am not satisfied that the landlord established how the removal of carpet could be considered a material term of the entire tenancy agreement. The mere inclusion of a clause in a tenancy agreement is not sufficient to establish that the term in question is truly a material term of that agreement.

Furthermore, it was confirmed by the landlord that the tenant did ultimately comply with the written warning, and the carpet had been restored. The landlord alleges that the tenant failed to comply with the deadline, which in this case was true. Regardless of whether the party met the deadline or not, the reasonableness of the deadline must still be considered. In this case the written warning was issued on July 20, 2021, and the tenant was given until August 1, 2021 to at least provide confirmation that they had made arrangements. The tenant showed compliance on September 21, 2021. Although I accept that the tenant did fail to meet the deadline, I am not convinced that the matter was so urgent that the failure to meet the deadline could be considered so serious that it necessitates the ending of this tenancy. I note that the tenant's failure to comply did result in the loss of time and resources for the landlord in dealing with this matter, and I warn the tenant that future breaches may be considered serious enough to justify the ending of this tenancy. In this case, I find that the landlord has failed to meet the high standard required to demonstrate that the clause in question was a material term of such importance that the landlord could end the tenancy on this basis.

The second ground provided on the 1 Month Notice was that the "Tenant has not done required repairs of damage to the unit/site/property/park". In this case although the tenant did make alterations to the rental unit, I am not satisfied that the landlord had established that damage was caused by the tenant.

For the reasons cited above, I find that the landlord has not met their burden of proof in establishing that they have cause to end this tenancy under section 47 of the *Act*. I do not find that the 1 Month Notice is valid, and accordingly, the tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

The landlord's 1 Month Notice dated August 18, 2021 is cancelled, and is of no force or effect. The tenant will continue until ended in accordance with the Act and tenancy agreement.

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: January 5, 2022

Residential Tenancy Branch