Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

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

The tenant attended the hearing. The landlord was represented at the hearing by its property manager ("**AT**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and AT confirmed, that the tenant served the landlord with the notice of dispute resolution package and supporting documentary evidence. AT testified that the landlord served the tenant with its documentary evidence. The tenant acknowledged receipt of the evidentiary package, but stated that he did not open it, as he had been "super busy". A party is not required to open a package in order to be considered served with it; they are only required to receive it. As such, I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the tenant entitled to an order cancelling the Notice?

If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenant, the landlord, and a third individual ("**JR**") entered into a written tenancy agreement starting March 1, 2007. Monthly rent is $1,002.92 and is payable on the first of each month. The tenant paid the landlord a security deposit of $410, which the landlord continues to hold in trust for the tenant.

The tenancy agreement included the following term:

> 13. ADDITIONAL OCCUPANTS. No person, other than those listed in paragraph two above, may occupy the rental unit. A person not listed in paragraph two above who resides in the rental unit for a period in excess of 14 cumulative days in any calendar year will be considered to be occupying the rental unit contrary to this agreement and without right or permission of the landlord. This person will be considered a trespasser. A tenant anticipating an additional person to occupy the rental unit must promptly apply in writing for permission from the landlord for such a person to become an approved document. Failure to apply and obtain the necessary approval of the landlord in writing is a breach of a material term of this agreement, giving the landlord the right and the tenancy after proper notice.

The tenancy agreement did not list any names of people at paragraph 2, which required the parties to list the names of all people (other than the tenants) who would occupy the rental unit.

The tenant testified that JR vacated the rental unit in October or November 2021. He testified that his current roommate ("MT", full name on cover of decision) moved in shortly thereafter. He did not get permission from the landlord for MT to move in, because he was afraid this may cause his rent to increase. He stated that JR did not assign his portion of the tenancy agreement to MT, and that it was his understanding that MT was an "occupant" of the rental unit and as such was not subject to the Act.

AT testified that the strata council advised him that there was a "new face" in the residential property in late November 2021. He testified that he attempted to contact the tenant to confirm this but received no reply. He testified he had then sent a warning letter to the tenant on December 16, 2021. The landlord provided a copy of this letter into evidence which stated:

> […]We have been informed of an unauthorized occupant in the rental unit. This is a breach of your tenancy agreement which states in part:
>
> > 13. ADDITIONAL OCCUPANTS. No person, other than those listed in paragraph two above, may occupy the rental unit.
>
> Please consider this a formal warning for you to comply with your residential tenancy agreement and the strata bylaws. Failure to comply with this notice could result in a notice to end tenancy. Any fines levied by the strata will be the responsibility of the tenant to pay.

AT testified that he sent this letter to the tenant by mail and posted it to the door of the rental unit. He did not receive a reply. The tenant acknowledged receipt of this letter but did not state that he responded.

On January 21, 2022 AT sent a "final warning" letter to the tenant. The landlord provided a copy of this letter into evidence which stated:

> We have been informed of an unauthorized occupant in the rental unit. This is a breach of your tenancy agreement which states in part:
>
> > 13. ADDITIONAL OCCUPANTS. No person, other than those listed in paragraph 2 above, may occupy the rental unit.
>
> Please consider this a formal warning for you to comply with your Residential Tenancy Agreement and the strata bylaws. Failure to comply with this notice could result in a notice to end tenancy. Any fines levied by the strata will be the responsibility of the tenant to pay.
>
> Please coordinate a time for those listed on the tenancy agreement to confirm their occupancy of the unit with I.D or the Landlord will take steps to end the tenancy in compliance with the Residential Tenancy Act.

AT testified he served this letter to the tenant by mail and by posting it on the door, but did not receive a response from the tenant. The tenant confirmed receiving this letter, it did not say that he made any reply.

Having not received any reply, the landlord issued the notice on January 27, 2022. It specified an effective date of February 28, 2022. It listed the reason for ending the tenancy as:

> 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 disputed this notice on January 28, 2022.

AT argued that the tenant breached material term of the tenancy agreement by allowing MT to occupy the rental unit without first obtaining the landlord's permission. AT stated that the landlord had no choice but to issue the Notice, as the tenant refused to engage with the landlord or respond to any of its correspondence.

The tenant stated that the Notice should be cancelled because the number of occupants in the rental unit had not changed. He stated that he believed this was a "heavy-handed" tactic of the landlord to end the tenancy, and that he has been a good tenant for 15 years.

Analysis

Section 47 of the Act states:

> **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;

RTB Policy Guideline 8 explains how this section is to be applied. It states:

> 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.

The landlord served the tenant with two separate warning letters. However, neither of these letters identifies for the tenant that the landlord believes he is in breach of a *material* term of the tenancy agreement. They state only that the tenant is in breach of a particular term of the tenancy agreement. The letters also do not replicate the portion of that term the landlord alleges the tenant is in breach of which states that the term is a *material* term.

Additionally, neither letter provides the tenant with a deadline by which the breach must be corrected by.

I do not find that either of the two letters tendered by the landlord serve as sufficient "written notice" of a breach of a material term of the tenancy agreement, given that they do not comply with the requirements set out in Policy Guideline 8.

As such, I find that the notice is invalid and of no force or effect. The tenancy shall continue.

I caution the tenant that, despite having been successful in this application, his pattern of ignoring correspondence from the landlord and ignoring issues that they raise, could have dire consequences for him in the future. Had the landlord's warning letters met the requirements set out at Policy Guideline 8, it is possible that I would have found that the Notice was valid, and ordered the tenancy ended. I encourage the tenant to have better lines of communication with the landlord and try to resolve problems that arise during the tenancy before the landlord feels that drastic step of eviction is the only recourse left to it.

Conclusion

The tenant has been successful in this application. The Notice is cancelled.

I order the landlord to serve the tenant with a copy this decision within three days of receiving it from the RTB.

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: May 17, 2022

Residential Tenancy Branch