Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES LTD
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.

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

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

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.

The tenant confirmed receipt of the 1 Month Notice dated April 30, 2022 and testified that they served the landlord with their application and evidence by registered mail on or about May 16, 2022. The tenant was unable to provide a valid Canada Post tracking

number as evidence of service. The tenant confirmed receipt of the landlord's evidence package.

The landlord disputed that they were served with the hearing package. When questioned how they were aware of the present hearing and able to call in to access if they were never served, the landlord responded that they found out about the dispute application by contacting the Branch. The landlord said they were fully prepared to proceed with the present hearing.

It is evident that the landlord was aware not only of the existence of the dispute resolution application filed by the tenant but its contents as they prepared and submitted over 100 pages of documentary materials in support of their position. While the landlord disputes that they were served in accordance with the *Act* or at all, I find their level of preparation and conduct to be consistent with a party who is fully aware of the particulars of an application.

Based on the testimonies of the parties I find no breach of the principles of procedural fairness to proceed with a hearing. I am satisfied, on a balance of probabilities, that the landlord was served with the tenant's application and materials in accordance with sections 88 and 89 of the Act and in any event have been sufficiently served in accordance with section 71(2).

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?
Are the tenants entitled to recover their filing fee from the landlord?

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 on the following background facts. This periodic tenancy originally began in 2009. The named respondent landlord took over the management of the property in 2018. The current monthly rent is $1,786.00 payable on the first of each month. The rental unit is a single detached house.

The landlord issued a 1 Month Notice dated April 30, 2022. The reasons provided on the notice for the tenancy to end are:

> *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 landlord submits that they have performed multiple inspections of the property over the course of the tenancy and have found it to be in poor condition. The landlord submitted into documentary evidence copies of the inspection reports of the property which notes many areas as being "dirty". The inspection reports are accompanied by multiple photographs of areas of the rental unit.

The landlord says that the condition of the property is a breach of the tenant's obligations under the tenancy agreement to maintain the property in reasonable condition. The landlord issued a warning letter dated July 30, 2021 requiring the tenant to perform the following repairs by August 11, 2021:

1. Clear our junk and yard waste from outside
2. Clean all floors, baseboards and wall
3. Replace broken window
4. Clean all window sills and tracks
5. Sand and paint all wall repairs
6. Fix and replace missing doors

The landlord says that they subsequently performed periodic inspections of the property and found that not all of the issues identified have been adequately addressed by the tenant. The landlord submits that the rental unit remains in unacceptable condition which they characterize as a significant risk to the property.

The landlord submits that the tenant disconnected smoke detectors in the property, and they were ultimately serviced and replaced by an electrician in May 2022. The landlord testified about ongoing conflicts with the tenant, their refusal to cooperate with showing the property to potential purchasers and interfering with inspectors and third-party contractors who have attempted to gain access to the property.

The tenant gave some testimony complaining about their interactions with the landlord and disputes the characterization of the state of the rental unit as posing a significant risk to the property.

Analysis

Section 47(4) 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.

In the present case the tenant confirmed receipt of the April 30, 2022, 1 Month Notice on that date and filed their application for dispute resolution on May 6, 2022. Therefore, I find the tenant was within the statutory timeline to file an application for dispute.

When a tenant files an application to dispute a 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 matter at hand the landlord must demonstrate that the property has been placed at significant risk by the tenant or that there has been a breach of a material term of the tenancy agreement that has not been corrected within a reasonable time after written notice was given.

Residential Tenancy Policy Guideline 8 defines a material term as a term of an agreement that is so important that the most trivial breach of that term gives the other party the right to end the agreement. Whether a term in an agreement is material is determined by the facts and circumstances of the tenancy agreement. To end a tenancy for a breach of a material term the party alleging the breach must inform the other party in writing that there is problem believed to be a material breach, that the problem must be fixed by a reasonable deadline, and if the problem is not fixed the party will end the tenancy.

The landlord submits that the tenancy agreement provides that the tenant must maintain reasonable health, cleanliness, and sanitary standards throughout the rental unit and the residential property. The landlord says that the tenant has breached this term in how they have failed to clean and maintain the property. The landlord says that the

letter dated August 11, 2021 identified the material breach and gave a deadline to fix the issue or the tenancy would end.

I am unable to find that the portion of the tenancy agreement referencing the condition of the suite to be reasonably interpreted to be a material term of the agreement. Not only is the clause a minor reference in a standard-form tenancy agreement used by the parties, their conduct is inconsistent with it being a material term. If the tenant's failure to maintain and repair the rental property was a material term as the landlord submits and the tenant failed to perform all of the repairs referenced in the warning letter of August 11, 2021 it would be reasonable to expect that the landlord would have issued a Notice to End Tenancy at that time. Instead, the evidence of the landlord is that they continued communicating and working with the tenant to rectify what they believed to be deficiencies. If there was a breach of a material term it would be reasonable to expect the landlord would have sought to end the tenancy immediately rather than engage in ongoing communication.

Based on the evidence before me I am unable to find that there is a material term of the tenancy agreement that has been breached that would give rise to a basis to end the tenancy.

Similarly, I find insufficient evidence that the tenant has put the landlord's property at significant risk. The landlord's evidence consisting of inspection reports and photographs show a rental property that is somewhat cluttered and with a level of wear and tear that is consistent with an occupied home. I do not find that the state of cleanliness or maintenance is such that it would be reasonably characterized as putting the property at significant risk.

While I accept the evidence of the parties that the smoke detectors for the rental property were disconnected, based on the evidence I find this was done due to their age and need to be replaced. I find insufficient evidence that since the replacement and repairs of the smoke detectors in May 2022 they have subsequently been disconnected to place the property at risk.

Viewing the totality of the evidence I am unable to find that there is cumulatively or individually a risk to the property caused by the tenant or their guests such that it forms the basis for the tenancy to end.

While the parties gave some evidence regarding their ongoing conflicts and interactions I find these are not the reasons indicated on the notice of April 30, 2022 and are irrelevant to the matter at hand.

I find that the landlord has not met their evidentiary onus on a balance of probabilities to establish a basis for the 1 Month Notice. Accordingly, I grant the tenants' application and cancel the notice. The 1 Month Notice of April 30, 2022 is of no further force or effect. This tenancy continues until ended in accordance with the Act.

As the tenants were successful in their application they are also entitled to recover their filing fee from the landlord. As this tenancy is continuing I allow the tenants to satisfy this monetary award by making a one-time deduction of $100.00 from their next scheduled rent payment.

Conclusion

The tenants are successful in their application. The 1 Month Notice of April 30, 2022 is cancelled and of no force or effect.

The tenants are authorized to make a one-time deduction of $100.00 from their next 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: September 9, 2022

Residential Tenancy Branch