Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), to cancel a One Month Notice to End Tenancy for Cause dated April 28, 2022 ("One Month Notice"); and to recover the $100.00 cost of their Application filing fee.

The Tenants, M.K. and T.B., and the Landlord, B.M., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

The Application named H.M. as the Landlord; however, B.M. attended the hearing and explained that he and his brother, P.M. are the owners of the residential property, and that their father, H.M, is the building manager. As a result, I have amended the Respondents' name in the Application, pursuant to section 64 (3) (c) and Rule 4.2 to correctly identify the owners as the Landlords.

During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I considered service of the Notice of Hearing documents and evidence between the Parties. The Tenants said they served H.M., their only contact with the residential property, by registered mail. They provided a registered mail tracking number, which I checked on the Canada Post website to learn that it was successfully delivered to H.M. The Landlord said that he had been given some documents by his father (who was unavailable to attend the hearing); however, the Landlord said that he did not know that he was supposed to serve the Tenants with the documents he submitted to the RTB. I advised him that the Applicants need to know on what evidence Respondents intend to rely in the hearing. As such, given this failure of service, it would be contrary to the

Rules, and administratively unfair of me to consider the Landlords' documentary evidence, although his testimony was still evidence before me.

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Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application, and the Parties confirmed these addresses in the hearing – the Landlord provided his address in the hearing, as well. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on October 1, 2019, ran to September 30, 2020, and then operated on subsequent fixed term agreements. They noted that T.B. was added to the tenancy agreement in December 2021. They agreed that the tenancy agreement requires the Tenants to pay the Landlord a monthly rent of $1,425.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of $650.00, and no pet damage deposit. The Landlord confirmed that the Landlords hold the security deposit in full.

The One Month Notice was signed and dated April 28, 2022, it has the rental unit address, and it was served in person on April 28, 2022. The One Month Notice has an effective vacancy date of May 31, 2022, and it was served on the ground that the Tenants breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the "Details of the Event(s)" section of the One Month Notice, the Landlord wrote:

> The tenants were given a written notice on March 29/2022 to remove a pitbull

> dog they have in the unit by April 20/2022, and have not done so. First they said that the dog will only stay for 2 weeks but they never got rid of it. This 4 plex unit does not allow any dogs (pets) in any units.

In the hearing, the Landlord said the material term that was breached was allowing a pet to live in the residential property. The Landlord said the tenancy agreement clearly says that pets are not allowed.

I asked the Landlord to explain how this is a material term of the tenancy agreement, which both Parties have agreed is material; however, the Landlord was not able to describe the no pet requirement as a material term; rather, he described it as a term in the contract.

I asked the Landlord how the dog has affected the tenancy and why it is a problem, and he said:

> It's just that we don't let pets for this property, because of the damages that dogs can do. I used to let pets in, but they wreck a lot of plants and flower and stuff with their urine and feces. It just says there are no pets.

The Tenant said: "My dog isn't a pet; she is a family member. She has helped me through a lot of emotional situations. She's a support animal."

The Tenants said that when T.B. was added to the tenancy agreement, the agreement was signed in the kitchen of the rental unit with H.M., the building manager, present. The Tenants said that their dog was also present in the kitchen when this agreement was signed, and that H.M. was aware of the dog the entire time, but said nothing.

The Landlord in the hearing was not present at this event, and the building manager was not in the hearing. I asked the Landlord about this, and he said: "I don't know anything about that, and they got notice to remove the animal. It says on the agreement 'no pets'."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following:

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;

Further, RTB Policy Guideline 8 (PG #8) states:

Material Terms

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.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

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.

I find from PG #8 that not every clause in a tenancy agreement is a material term. Each clause must be examined separately in this regard. The clause in question is to be considered in the overall scheme of the tenancy agreement, as opposed to the consequences of a breach of that term. Applications are decided on a case-by-case basis. Arbitrators look to the true intention of the Parties in determining whether the clause is material.

In this case, there is evidence before me that when T.B. was added to the tenancy agreement, the agreement was signed in the kitchen of the rental unit with H.M., the building manager, present, and the dog present, as well.

Based on the evidence before me overall, and considering the Parties' intentions for this tenancy agreement, I note that the Parties did not use "material" to describe this clause in the tenancy agreement. Further, I find that the Parties did not consider the "no pet" clause when they signed the agreement with a pet in the room. I find these factors contribute to the conclusion that the "no pet" clause is not a material term.

As such, I find that the Tenants have not failed to comply with a material term of the tenancy agreement. Accordingly, I find the One Month Notice is not based on a valid ground for ending the tenancy, and I cancel the One Month Notice pursuant to section 62 of the Act.

As the Tenants are successful in their Application, I also award them with recovery of their **$100.00** Application filing fee from the Landlord, pursuant to section 72 of the Act. The Tenants are **authorized** to **deduct $100.00** from one upcoming rent payment in complete satisfaction of this award.

Conclusion

The Tenants are successful in their Application to cancel the One Month Notice. The

Landlord failed to provide sufficient evidence to establish that the Tenants had failed to comply with a material term of the tenancy agreement.

The One Month Notice is cancelled and is void and unenforceable. The tenancy will continue until ended in accordance with the Act.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 02, 2022

Residential Tenancy Branch