Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PENINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **LL: OPC, FFL**
TT: CNC, FFT

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the "*Act*").

The tenant RN applied 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.

The landlord named all of the respondents and applied for:

- an Order of Possession pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenants 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 TB (the "landlord") primarily speaking. The tenants in attendance confirmed they represented all named tenants.

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.

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?
Is either party entitled to recover their filing fee?

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 tenancy began on September 1, 2019. The rental unit is a single detached house in a rural area. A security deposit of $1,200.00 and pet damage deposit of $1,200.00 were collected at the start of the tenancy and are still held by the landlord. The monthly rent is $2,436.00 payable on the first of each month.

The landlord submits that by a warning letter dated June 23, 2021 the tenants were advised that they were keeping more dogs on the property than was authorized under the tenancy agreement. The letter also identified that the condition of the rental unit was “quite messy” and the tenants were reminded of their need to maintain reasonable health, cleanliness and sanitary standards pursuant to the tenancy agreement. The landlord wrote that they would conduct a subsequent inspection in August to ensure the issues identified were corrected.

The landlord issued a subsequent warning letter dated June 25, 2021 quoting the relevant portions of the tenancy agreement and giving the tenants until July 19, 2021 to correct their breaches.

The landlord testified that the issues were not sufficiently resolved by the tenants within the timeline provided.

The landlord subsequently issued warning letters dated November 12, and November 16, 2021 advising the tenants of noise complaints and again the unacceptable condition of the rental property. The landlord gave a deadline of December 1, 2021 for the tenants to correct these identified issues.

The rental property was visited by bylaw inspectors from the municipality who issued a letter dated December 3, 2021 indicating that the rental unit was in violation of bylaws due to its unsightly nature. The bylaw officer notes, “At the time of our inspection, there was rubbish, junk, construction materials, scrap metals and assorted junk on the Property, making it unsightly.”

The bylaw officer issued follow-up letters dated June 14, 2022 noting the continued unsightly nature of the property, the presence of multiple wrecked vehicles stored about the property and advising that further failure to correct the issues may result in fines.

The landlord submits that the tenant has failed to comply with the tenancy agreement and municipal bylaws in keeping the rental property in an unsightly, untidy and messy condition.

The landlord issued a 1 Month Notice dated June 14, 2022. The reasons indicated on the notice for the tenancy to end are that:

> *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.*

In the details of the cause the landlord says that the tenants are in contravention of municipal bylaws and have failed to comply with the requirement to clean and maintain the rental unit causing municipal fines and costs.

The landlord submits that the tenants have failed to abide by the requirements of the tenancy agreement to maintain the rental unit as well as municipal bylaws and standards. The landlord submits that they have issued numerous written warnings to the tenants in an attempt to resolve the issue prior to the issuance of the 1 Month Notice. The landlord further testified that letters from the municipality are sent to both the property owner as well as the dispute address and the tenants were aware of the deficiencies.

The landlord testified that the rental unit remains in an unacceptable condition as at the date of the hearing. The landlord submits that the tenants' failure to maintain the rental unit poses a significant risk due to the accumulation of garbage and vehicular wrecks as well as the possibility of further municipal fines and penalties.

The tenants submit that the issues with the condition of the rental unit were never communicated to them prior to the issuance of the 1 Month Notice. The tenants say that they first became aware of the breaches of municipal bylaws when the landlord included the letters in the evidence package for the present hearing. The tenants dispute that they ever received correspondence from the municipality or earlier warnings. The tenants say that they took corrective action upon first learning of the issues in August 2022.

The tenants submitted into evidence an email correspondence from the municipal bylaw officer dated September 28, 2022 stating they conducted an inspection on September 10, 2022 and at the time of the inspection, the previous violations have been remediated.

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 tenants received the 1 Month Notice on June 15, 2022 and filed their application for dispute on June 24, 2022. I therefore find the tenants were within the statutory timeline to file their application.

If a 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 matter at hand the landlord must demonstrate that the tenant has put the landlord's property at significant risk or they have breached a material term of the tenancy agreement and failed to correct the breach within a reasonable time after written notice was given.

Based on the evidence I find little risk to the property. I find that the landlord's testimony and the correspondence from municipal inspectors demonstrate the property to be in an unsightly condition. I find that keeping a property in an unsightly state is not equivalent to posing a risk to the property itself. The evidence before me is that the tenants stored some vehicular wrecks and other scrap on the property. I find insufficient evidence that the items left on the property are inherently hazardous in nature or that their presence poses a danger to the property.

The primary risk posed by the tenant's storage of these items appears to be economic with the landlord at risk of paying municipal fines or fees for the removal of these items. I find that economic danger is not a significant risk to property as ordinarily contemplated. I find insufficient evidence to demonstrate that the property is at significant risk due to the tenants.

Residential Tenancy Policy Guideline 8 defines a material term as 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.

I accept the evidence of the landlord that they issued correspondence to the tenants informing them of breaches of the terms of the tenancy agreement. I further accept that letters from bylaw officers were sent both to the landlords and to the rental property address to the tenants as is their customary practice. I do not find the tenants' submission that they were never provided warnings by the landlord to be believable or

supported in the materials. I find the denial of the tenants to have little support and is contradicted in their own testimony about earlier discussions with the landlord and bylaw officers.

I accept the undisputed evidence of the parties that the signed tenancy agreement contains a clause requiring the tenants to maintain the property. The landlord characterizes the clause a material term of the agreement. It is clear that the landlord relied upon the clause in the agreement and cited it to the tenants in their warning letters regarding the condition of the property.

I note that the landlord provided various deadlines to correct the perceived breach, which have all passed. The landlord took no action to enforce these deadlines or take additional steps in response to the breach until issuing the 1 Month Notice on June 14, 2022. The 1 Month Notice was issued nearly 1 year after the first warning letter of June 24, 2021.

I find that a term of a tenancy where there is a breach that is allowed to continue for nearly a year after first being identified is not consistent with it being a material term. If the landlord believed the term to be material with its breach being so fundamental as to give rise to an end of the tenancy, it would be reasonable to expect that the earlier warning letters and deadlines for correction to have some consequence. Instead, the evidence before me is that after the issuance of the warning letters the landlord took no further enforcement action and allowed deadlines to pass. I find the conduct of the landlord to be inconsistent with this term being a material component of the tenancy.

I further find that the issues identified as breaches have been corrected by September 28, 2022. I am satisfied with the documentary evidence of the tenants in the correspondence from the municipal bylaw officer that the issues identified were corrected by September 28, 2022.

Section 47(1)(h)(ii) provides that a breach can be cured within a reasonable time. The issue of what constitutes reasonable time was dealt with in *McLintlock* v *British Columbia Housing Commission*, 2021 BCSC 1972 at para 55-57. A reasonable timeframe requires more than simply applying the deadline imposed by the landlord that was not adhered to by the tenants. The question is whether the timeframe is reasonable given all the circumstances. Additionally, the remedial nature of the Act must be kept in mind when determining what constitutes a reasonable amount of time.

I accept that the tenants rectified the issues cited by the landlord and the municipality by September 28, 2022. Based on the evidence of the landlord this date is over a year after the first warning letter of June 24, 2021. The date is also approximately 4 months after the issuance of the 1 Month Notice.

I find the timeframe to fall within what would be reasonable given the nature of the deficiency and the timeframe required to correct the issue. This is a case where the rental property was deemed unsightly due to the unkept nature and various automobile wrecks on the property. As noted above, I find no danger to the property that would require remediation to be made immediately and the deadlines of the landlord were clearly of little consequence.

I find insufficient evidence that the term requiring the tenant to maintain the rental property was a material term given the landlord's failure to take steps to enforce the clause. I further find that the tenants have remedied such breach of the agreement in a reasonable timeframe given the nature of the issue. Accordingly, I find there is insufficient evidence that there has been a breach of a material term, uncorrected within a reasonable timeframe, that gives rise to an end of this tenancy.

I allow the tenants application and cancel the 1 Month Notice of June 14, 2022. The notice 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 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 landlord's application is dismissed without leave to reapply.

The tenants are successful in their application, the 1 Month Notice of June 14, 2022 is of no further force or effect. This tenancy continues until ended in accordance with the Act.

The tenants are authorized to make a one-time deduction of $100.00 from their next scheduled 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: November 4, 2022

Residential Tenancy Branch