



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA WOMEN'S RESOURCE
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a One Month Notice to End Tenancy for Cause.

The Agent for the Landlord stated that the Tenant did not serve the Landlord with this Dispute Resolution Package nor did the Tenant serve the Landlord with any evidence for these proceedings. As these documents were not served to the Landlord, the Tenant's evidence was not accepted as evidence for these proceedings

The Agent for the Landlord stated that the Landlord became aware of these proceedings during a telephone conversation with an employee of the Residential Tenancy Branch.

The parties were advised that I may be able to provide the Landlord with an Order of Possession on the basis of the Tenant's Application for Dispute Resolution, at which point the Agent for the Landlord advised that the Landlord is prepared to proceed with the hearing in spite of not being served with the Application for Dispute Resolution. The hearing therefore proceeded in the absence of the Tenant.

On January 23, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was not served to the Tenant as evidence for these proceedings, as they had been previously served to the Tenant.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure requires a Respondent to serve evidence that the Respondent intends to rely on at the hearing to the Applicant as soon as possible. This requires a Respondent to serve documents to the Applicant as evidence for the proceedings even if the Applicant has been served with those documents prior to the commencement of the proceedings. This is to ensure that the Applicant has not lost or somehow misplaced documents that have been previously served to them and to ensure they are aware that those documents will be considered at the proceedings.

As the Landlord did not serve their evidence package to the Tenant as evidence for these proceedings, I am unable to consider that evidence at these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Tenant has applied to cancel the One Month Notice to End Tenancy for Cause, dated September 12, 2022. The Tenant submitted a copy of this document as evidence for these proceedings. The Agent for the Landlord stated that the Landlord has a copy of this document. As the document was submitted to the Residential Tenancy Branch by the Tenant and the Landlord has a copy of it, I find it reasonable to consider this document as evidence for these proceedings.

The Agent for the Landlord stated that:

- this tenancy began less than one year ago;
- rent is due by the first day of each month;
- a One Month Notice to End Tenancy for Cause, dated September 12, 2022, was posted on the Tenant's door on September 12, 2022;
- the One Month Notice to End Tenancy for Cause declared that the rental unit must be vacated by November 01, 2022;
- the Tenant is still living in the rental unit;
- the One Month Notice to End Tenancy for Cause declares that the tenancy is ending because the tenant has breached a material term of the tenancy that was not corrected within a reasonable time;
- the Landlord believes the Tenant breached a material term of the tenancy agreement by storing an e-scooter inside the rental unit;
- there is nothing in the written tenancy agreement that prohibits the Tenant from storing an e-bike or e-scooter inside the residential complex; and
- there is an addendum to the tenancy agreement that prohibits the Tenant from storing an e-bike or e-scooter inside the residential complex, however the Tenant did not sign that addendum;
- the Tenant is still storing an e-scooter in her unit;
- the Landlord is concerned about the safety of other residents, as they believe storing e-bikes and e-scooters indoors is a safety hazard.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant have a tenancy agreement which requires rent to be paid by the first day of each month.

Section 47(1) of the *Residential Tenancy Act (Act)* permits a landlord to end a tenancy by giving notice to end the tenancy if:

- a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- (d) the tenant or a person permitted on the residential property by the tenant has
- (i) significantly interfered with or unreasonably disturbed another occupant or the

landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;

(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;

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*];

(j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

(k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i) the date the tenant receives the order;

(ii) the date specified in the order for the tenant to comply with the order.

On the basis of the undisputed evidence, I find that the Landlord posted a One Month Notice to End Tenancy for Cause on the Tenant's door on September 12, 2022, which informed the Tenant of the Landlord's intent to end the tenancy pursuant to section 47(1)(h) of the *Act*. The Landlord bears the burden of proving that they have grounds to end the tenancy pursuant to section 47(1)(h) of the *Act*.

To end a tenancy pursuant to section 47(1)(h) of the *Act* a landlord must first prove that the tenant breached a material term of the tenancy agreement.

Residential Tenancy Branch Policy Guideline 8, with which I concur, reads, in part:

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 Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

As there is nothing in the tenancy agreement that prohibits the Tenant from storing an e-bike or e-scooter inside the residential complex, I cannot conclude that the parties agreed this was a material term of the agreement when this tenancy began.

As the Tenant did not sign an addendum to the tenancy agreement to indicate that she agreed an e-bike or e-scooter could not be stored inside the residential complex, I cannot conclude that Tenant agreed this became a material term of the agreement.

As the Landlord has failed to establish that storing an e-bike or e-scooter inside a rental unit is a breach of a material term of the Tenant's tenancy agreement, I cannot conclude that the Landlord has the right to end this tenancy pursuant to section 47(1)(h) of the *Act*.

As the Landlord has failed to establish grounds to end this tenancy pursuant to section 47(1)(h) of the *Act*, I grant the Tenant's application to cancel the One Month Notice to End Tenancy for Cause.

I specifically note that landlords have the right to end a tenancy if a tenant is storing items in a rental unit that pose a health or safety risk. The correct section for ending a

tenancy for this reason is section 47(1)(d)(ii) or 47(1)(d)(iii) of the Act. The Landlord retains the right to serve the Tenant with another One Month Notice to End Tenancy for Cause pursuant to these sections in the event the Landlord believes that storing e-bikes/e-scooters is a serious health or safety risk. At any subsequent hearing, the Landlord would be the burden of proving a serious health or safety risk exists.

Conclusion

The One Month Notice to End Tenancy for Cause dated September 12, 2022 is set aside. This tenancy shall continue until it is ended in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 09, 2023

Residential Tenancy Branch