



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding BONAVIDA MANAGEMENT
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: Landlord: OPC FFL
Tenant: CNC LRE OLC FFT

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant duly served with the Applications and evidence.

The tenants confirmed receipt of the 1 Month Notice, which was posted on their door on April 4, 2023. Accordingly, I find that the 1 Month Notice was served on the tenant in accordance with section 88 of the *Act*.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Are both parties entitled to recover the filing fees for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here.

This month-to-month tenancy began on November 1, 2013 with monthly rent currently set at \$3,277.00, payable on the first of each month. The landlord currently holds a security deposit of \$1,325.00 for this tenancy.

The landlord served the tenant with a 1 Month Notice on April 4, 2023 on the following grounds:

1. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The landlord alleges that the tenant has breached a material term of the tenancy agreement by refusing to remove several items off of the roof and deck area connected to the tenant's rental unit. The landlord submitted copies of several warning letters sent to the tenant, as well as a copy of the tenancy agreement and inspection report from a roofing company. It is undisputed that there was a water leak, which the landlord attributes to the tenant's actions. The landlord feels that they have attempted to provide the tenant with ample opportunity to remedy the situation, but has been met with resistance from the tenant to comply with their letters. By failing to comply, the landlord feels that the tenant has put the landlord's property at significant risk, and the landlord therefore has no choice but to end the tenancy.

The tenant does not dispute that they have received the warning letters in evidence, or that they have used the deck and roof area for their garden. The tenant testified that they had complied with the original warning letter by removing the barbecue, but dispute that the other items on the deck and roof area could be considered a material breach. The tenant feels harassed by the landlord, and feels that the other requests are not reasonable nor justified. The tenant testified that a few items on the roof are from the previous tenants, and that the landlord was well aware that they had their garden there since 2013.

Analysis

Section 46 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. As the tenant had filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving the landlord has cause to end the tenancy on the grounds provided on the 1 Month Notice.

A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. As noted in RTB Policy Guideline #8, 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. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach...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...*

Based on the evidentiary materials as well as the testimony in the hearing, I am not satisfied that the tenant has failed to correct any material breaches after being informed by the landlord to do so.

In the letter dated June 13, 2022, the landlord referenced a breach of the tenancy agreement which states that barbecue shall not be used or in the premises without the prior written consent of the Landlord. The tenant complied by removing the barbecue on June 15, 2022.

The letter also requested that the tenant “remove all large plants and trees from your balconies”, and cited the tenant’s obligation to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and residential property, and take necessary steps to repair damage to the residential property if caused by the actions or neglect of the tenant.

The landlord sent a subsequent letter dated June 22, 2022 stating that the tenant was bound by the Rules and Regulations, and that the Act allows a landlord to end the tenancy for cause under section 4y of the Act. The landlord provided photos of the items that needed to be removed, and informed the tenant that they did not have permission to run their hose over the roof. The landlord also reminded the tenant to maintain reasonable cleanliness and sanitary standards.

The landlord obtained a report from a roofing company dated December 7, 2022, which included several observations and findings. The report noted several observations, including that “the amount of heavy planters and vegetation is of concern as these can damage the roof ballast as well as block drains” and “vines growing between the railings on the south side is a hazard as it can pop out the railing glass causing it to potentially fall seven stories”.

The landlord sent a letter through their legal counsel on February 20, 2023 informing the tenant that the tenant should review the attached roofing report, and take note of the observations, conclusions, and recommendations. The letter also referenced the hose, and noted that “continued use of the hose or the tap water will be considered a breach of your tenancy agreement”.

The tenant was sent one final letter on March 27, 2023 before the tenant was served with the 1 Month Notice on April 4, 2023. This letter noted the previous requests about removing all of the planters, vegetation and any dirt or other debris on the deck, as well as the vines from the deck railing, and informed the tenant of a re-inspection on March 29, 2023.

In reaching my decision, I note that the landlord had served the tenant with a 1 Month Notice on the grounds of breaching a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. In review of the written notices sent to the tenant, along with the tenancy agreement, I note that the tenant had complied immediately with the landlord's request for the tenant to remove the barbecue.

Although the landlord did make several requests for the tenant to remove other items from their balcony, the landlord did not clearly reference which specific term of the tenancy agreement the tenant was breaching, and how this term is material. Although the landlord's requests were very specific and clear, the landlord only referenced the terms of the tenancy agreement that reflect the tenant's general obligations to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and residential property, and take necessary steps to repair damage to the residential property if caused by the actions or neglect of the tenant.

As noted in RTB Policy Guideline #8, 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. I do not find that referencing the tenant's general obligations under the Act to maintain the rental unit and property qualifies as sufficient justification for ending a tenancy for breach of a material term, especially when the tenancy agreement does include a specific term that may apply to this situation, specifically 8(2) that states that "Nothing shall be thrown from or placed on, or hung on, or affixed to the inside or outside of windows, doors, balconies, or to the exterior parts of the building". None of the warning letters referenced this term despite the landlord's concerns about the vines growing between the railings.

Furthermore, although the landlord repeatedly expressed concern about the possible damage to the property caused by the tenant's actions, the landlord did not indicate on the 1 Month Notice that the tenancy should end because the tenant has put the landlord's property at significant risk, or that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

As noted above, the landlord must establish that they have grounds to end the tenancy for the reason(s) provided on the 1 Month Notice. For the reasons cited above, I find that the landlord has failed to demonstrate how the tenant has breached a material term of the tenancy agreement after being provided with written notice to do so. Accordingly, I am allowing the tenant's application for cancellation of the 1 Month Notice dated April 4, 2023. The tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

I further note that the tenant referenced concerns about the landlord's behaviour in their application and in the hearing. Under section 87.3 of the *Act*, "Subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has

- (a) contravened a provision of this Act or the regulations,
- (b) failed to comply with a decision or order of the director, or a demand issued by the director for production of records, or
- (c) given false or misleading information in a dispute resolution proceeding or an investigation.

I note that the Director has not delegated to me the authority to impose administrative penalties under section 87.3 of the *Act*, or to investigate these kinds of complaints. That authority has been delegated to a separate unit of the Residential Tenancy Branch. The administrative penalty process is separate from the dispute resolution process. The Compliance and Enforcement Unit (CEU) is a team within the Residential Tenancy Branch, and the tenant may pursue the appropriate remedied through this process if they wish. As I do not have the delegated authority to deal with these types of complaints, and as I am not satisfied that any further orders are required at this time, I dismiss the remainder of the tenant's application without leave to reapply.

As the tenant was successful in their application, I allow the tenant to recover the filing fee for this application.

I dismiss the landlord's entire application without leave to reapply.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice dated April 4, 2023. The 1 Month Notice of is of no force or effect. This tenancy is to continue until ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenant's application is dismissed without leave to reapply.

The landlord's entire application is dismissed without leave to reapply.

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: July 07, 2023

Residential Tenancy Branch