Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding SUPER SILVER HOLDINGS LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RR, RP, LRE, LAT, FFT / OPC, FFL

Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Tenant requests the following:

- An order cancelling a One Month Notice to End Tenancy for Cause (the Notice) under section 47(4) of the Act;
- To reduce rent for repairs, services or facilities agreed upon but not provided under section 65 of the Act;
- An order for the Landlord to carry out repairs under section 32 of the Act;
- To restrict or suspend the Landlord's right of entry to the rental unit under section 70 of the Act
- Authorization to change the locks of the rental unit under sections 31 and 70 of the Act; and
- To recover the cost of the filing fee under section 72 of the Act.

The Landlord requests the following:

- An Order of Possession after issuing the Notice under section 55(2)(b) of the Act; and
- To recover the cost of the filing fee under section 72 of the Act.

The Tenant attended the hearing and was represented by counsel. An Agent for the Landlord attended the hearing for the Landlord.

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the Materials) for the other's Application and the other's evidence.

Though there had been a minor error in the address for the Landlord provided on the package sent by the Tenant, the Landlord's Agent confirmed the Tenant's Materials and evidence had nevertheless been received with minimal issue by the Landlord. Based on their testimonies, per section 71 of the Act, I find that each party was served with these Materials and evidence as required under sections 88 and 89 of the Act.

Preliminary Issue – Severing

The Tenant applied for multiple remedies under the Act, some of which were not sufficiently related to one another.

Rule 2.3 of the *Rules of Procedure* states that claims made in an Application must be related to each other. Rule 6.2 of the *Rules of Procedure* states that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After reviewing the issues raised by the Tenant, I determined that the primary issue is the Tenant's request to cancel the Notice and the other issues were not sufficiently related. I exercised my discretion to dismiss with leave to re-apply, all claims other than the one related to the Notice. Leave to reapply is not an extension of any applicable time limit.

Issues to be Decided

- Should the Notice be cancelled?
- If not, is the Landlord entitled to an Order of Possession?
- Are either party entitled to recover the filing fees for their Application from the other?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on September 1, 2023.
- Rent is $1,200.00 per month due on the first day of the month.
- A security deposit of $600.00 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence.
- The Tenant still occupies the rental unit, which is an apartment suite.

A copy of the Notice was entered into evidence. The Notice is on the approved form and is signed and dated January 31, 2024 and provides an effective date of February 29, 2024. The reason for ending the tenancy, per the Notice is:

- 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's Agent, SL, testified as follows. The Landlord seeks and end to tenancy as the Tenant will not allow access to the rental unit for repairs. Notice of an inspection to take place on December 10, 2023 was given in writing to the Tenant on December 5, 2023. When SL attended the rental unit, the Tenant left the building. SL was able to enter the rental unit and inspected for about ten seconds, though as there were items in the way, they could not go any further.

The Tenant called SL soon after the inspection and was upset they entered the rental unit. Notice of entry for an inspection on December 15, 2023 was re-served and the inspection went ahead with no issues reported.

There have been several times the Tenant has requested repairs to the rental unit, a time for access is set up then the Tenant will leave, not be at the rental unit, or will not allow access, including a visit on January 4, 2024 when the Tenant refused access to an electrician. The required repairs have now been completed, but it was a frustrating process. I was referred to a letter from the electrician in which they state the Tenant refused access to the rental unit.

SL stated the material term of the tenancy agreement the Tenant has breached is seen at paragraph 20 and reads as follows:

> *"The tenant shall not unreasonably withhold consent to the Landlord, to enter the tenant's premises when the proper request is made at the time of entry; and shall permit the Landlord entry at reasonable times on proper*

> *notice to view the state of repair, or to repair or alter the premises, or to show the premises to prospective purchasers or tenants. Home inspection done every one, two or three months."*

The Tenant was notified of the issue in writing on December 10, 2023, though SL acknowledged that no mention that denial of entry to the rental unit was a breach of a material term of the tenancy agreement or that an end to tenancy would be sought if the issue continued.

Copies of written notices and correspondence provided to the Tenant by the Landlord were entered into evidence.

Counsel for the Tenant submitted as follows. The Tenant received a notice for entry on December 4, 2023 and Landlord's Agent attempted to enter the rental unit on December 6, 2023 without the consent of the Tenant. A further notice of entry was posted on the door of the rental unit on December 5, 2023, and the Landlord's Agent was able to gain access on December 10, 2023.

The Tenant finds the number of notices of entry stressful and argued that the sense of reasonableness of entry has been lost over time due to the frequency the Landlord requests entry to the rental unit.

The Tenant testified they had said to SL that the electrician and ML, another Agent of the Landlord could enter the rental unit on January 4, 2024, but not SL as they had "aggressively attacked" the Tenant with lies, so they tried to avoid them. I was referred to a copy of a text message exchange entered into evidence in which the Tenant stated they confirmed to SL they took no issues with ML or the electrician entering the rental unit.

Analysis

Rule 6.6 of the *Rules of Procedure* states that when a tenant applies to cancel a Notice to End Tenancy, the landlord must prove the reason they wish to end the tenancy. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

There is one reason provided on the Notice which is echoed in section 47(1)(h) of the Act which provides that the tenant has failed to comply with a material term and has not

corrected the situation within a reasonable time after the landlord gives written notice to do so.

A material term is one so important that the most trivial breach of that term gives the other party the right to end the agreement, as confirmed in Policy Guideline 8 - Unconscionable and Material Terms. The Guideline also confirms that it is for the person relying on the term to present evidence and arguments supporting the proposition that the term is a material term. Simply referring to a term as a material term does not make it one.

Furthermore, Policy Guideline 8 provides that 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.

I find it entirely reasonable that if a landlord wishes to end a tenancy for a tenant's breach of a material term, that clear written notice is given to the tenant, along with time to correct the issue, and clear warning that the tenancy could be ended if the issue is not remedied, given that ending a tenancy for cause is a serious undertaking. I find it would not only be unreasonable, but also inconsistent with the Act, if a Landlord were able to end a tenancy for a tenant's breach of a material term if the Landlord had not given adequate notice to the tenant as set out above.

Based on the evidence before me and the testimony and submissions of both parties, I find that the issue of inspections and Landlord's access to the rental unit has clearly been a point of contention between the parties. I find the Landlord's claims that Tenant prevented access to be slightly exaggerated and inconsistent at times, for example it seemed that SL was able to access the rental unit on December 10, 2023 in the Tenant's absence, though chose to cut the inspection short and provide further notice of entry soon after. The Landlord's Agent also indicated the required repairs had also been completed, indicating access has been available to the Landlord.

Significantly, I also find the Landlord failed to notify the Tenant in a sufficiently clear manner that in the Landlord's view, the Tenant's conduct was a breach of a material term of the tenancy agreement. I also find the Landlord failed to sufficiently notify the Tenant that they would pursue and end to tenancy were the alleged breach not corrected within a reasonable amount of time.

Given, the absence of this written notice, I find the Landlord has failed to prove on a balance of probabilities they had sufficient cause to issue the Notice under section 47(1)(h) of the Act. I therefore grant the Tenant's Application and order the One Month Notice to End Tenancy for Cause dated January 31, 2024 cancelled and of no force or effect. This tenancy continues until ended in accordance with the Act.

The parties appeared to be fully aware of the Landlord's right to enter the rental unit after written notice is given, per section 29(1)(b) of the Act. I also remind the parties of the provisions of section 29(1)(a) of the Act which states that a tenant may also give permission for access, either at the time entry is requested, or less than thirty days before entry. In the interests of maintaining a harmonious tenancy and minimizing any future friction, the parties have the option to discuss the issue of the Landlord's access in advance and have any inspections take place at a mutually agreed upon time, rather than the Landlord serving notice of entry unilaterally.

As the Tenant has been successful in their Application, I find they are entitled to the reimbursement of the filing fee. I order that the Tenant may make a one-time deduction of $100.00 from a future rent payment in satisfaction of the return of the filing fee per section 72(2)(a) of the Act. I dismiss without leave to reapply the Landlord's request to recover the filing fee for their Application from the Tenant.

Conclusion

The Tenant's Application is granted. The Notice is cancelled, and the tenancy continues until 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: April 30, 2024

Residential Tenancy Branch