

DECISION

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution (Tenant's Application) under the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act;
- a Monetary Order for compensation for damage or loss under the Act, regulation, or tenancy agreement under section 67 of the Act; and
- an order requiring the Landlord to comply with the Act, regulation, or tenancy agreement under section 62 of the Act.

This hearing also dealt with the Landlord's Application for Dispute Resolution (Landlord's Application) under the Act for:

- an Order of Possession based on the One Month Notice.

Tenant R.D. attended the hearing for the Tenants.

Agents R.P., A.P. and R.A. attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The parties acknowledged receipt of each other's Proceeding Packages. No concerns about service were raised. I therefore found the parties duly served with the Applications for the purposes of the Act and the Rules of Procedure and the hearing of both applications proceeded as scheduled.

Service of Evidence

The parties denied receipt of the documentary evidence before me from one another. The Tenant stated that their documentary evidence was sent by regular mail on approximately August 15, 2024, but provided no documentary or other corroboratory evidence to confirm that. The Agents denied receipt.

The Agents stated that their documentary evidence was sent to the Tenant by registered mail with the Proceeding Package on August 15, 2024. Although the Agents provided an RTB-55 Proof of Service form for the Proceeding Package, the registered

mail tracking number, and the receipt(s) from Canada Post and Shoppers Drug Mart, no evidence was submitted stating or demonstrating what was contained in this package. While the Agents stated that they believed their documentary evidence to include copies of correspondence sent to the Tenant, no such documentation was before me from the Landlord on either file. The Tenant stated that they only received the Proceeding Package by registered mail, and nothing else. Further to this, the RTB-55 does not indicate that anything other than the Proceeding Package was served.

Based on the above, I was not satisfied by either party that the documentary evidence before me had been properly served or exchanged. I also found it important to proceed with the hearing as scheduled, without delay, as it related to a notice to end tenancy and the matter of possession of the rental unit, among other things. As a result, I excluded the documentary evidence before me from the parties, except for the tenancy agreement, as I found that it would be administratively unfair to consider it given its lack of service. As the parties both had copies of the tenancy agreement, or pictures of it, I nevertheless accepted the tenancy agreement for consideration.

Preliminary Matters

Matter #1

The parties agreed that the Landlord is a corporation. In their Application, the Tenants personally named two agents for the Landlord as the respondents, rather than the corporation that is the Landlord. With the consent of the parties, the Tenants' Application was amended to correctly name the corporate Landlord, pursuant to rule 7.12 of the Residential Tenancy Branch Rules of Procedure(Rules).

Matter #2

In their Application the Tenants sought remedies under multiple unrelated sections of the Act. Sections 2.3 and 6.2 of the Rules state that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenants applied to cancel a One Month Notice, and the Landlord applied for enforcement of the same One Month Notice, I found that it was a priority to deal with validity and enforceability of the One Month Notice and the matter of the end or continuation of the tenancy as a result. As I determined the other claims made by the Tenants in their Application not to be sufficiently related to validity or enforceability of the One Month Notice, I exercised my discretion to dismiss them with leave to reapply.

As a result, the hearing proceeded based only on the matter of validity and enforceability of the One Month Notice.

Issues to be Decided

Are the Tenants' entitled to cancellation of the One Month Notice?

If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

In their Application the Tenants stated that they received the One Month Notice off their door on July 18, 2024. This is the same date the One Month Notice before me was signed and dated and the same service method set out on page three as having been used.

The One Month Notice before me is signed and dated July 18, 2024, has an effective date of August 19, 2024, and states that the tenancy is being ended because the Tenant breached a material term of the tenancy agreement. Further details are provided in the details of cause section with regards to service of warning letters sent to the Tenants regarding term 20 of their tenancy agreement and their use of the parking area.

The parties disagreed about whether:

- the term relied upon by the Landlord is a material term of the tenancy agreement;
- the Tenants breached this term; and
- a proper breach letter was issued by the Landlord in accordance with Residential Tenancy Policy Guideline (Guideline) 8 prior to service of the One Month Notice.

Neither party was able to articulate for me what a material term was in accordance with Guideline 8 and the parties acknowledged not having read that Guideline. The Tenant denied agreeing that the portion of term 20 of the tenancy agreement relied upon by the Landlord was a material term and appeared to believe a material term related to possessions, even after having been read the definition in Guideline 8. When asked, the Agents were unable to articulate why they believed the term relied upon to be material.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party with the burden of proof has responsibility to provide evidence over and above their testimony to prove their claim.

Are the Tenants' entitled to cancellation of the One Month Notice?

Section 47(1)(h) of the Act states that a landlord may end a tenancy by way of a One Month Notice if the tenant has breached a material term of the tenancy agreement and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Guideline 8 sets out what a material term is, and how to go about ending a tenancy under section 47(1)(h) of the Act. More specifically, it states that 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. It also states that determine the materiality of a term during a dispute resolution hearing, the arbitrator will consider the importance of the term in the overall scheme of the tenancy agreement and the facts and circumstances surrounding the creation of the tenancy agreement. For reference I have set out below the entirety of term 20.

20. STORAGE. All property of the tenant kept on the residential property must be kept in safe condition in proper storage areas and is at the tenant's risk for loss, theft, or damage from any cause whatsoever. Hazardous or dangerous items must not be kept or stored on or in the residential property or rental unit. It is a material term of this Agreement that items stored inside the rental unit must be limited in type and quantity so as not to present a potential fire or health hazard, or to impede access to, egress from or normal movement within any area of the rental unit.

Vehicles. Only vehicles listed in the tenancy application and no other vehicles may be parked, but not stored, on the residential property. The parking areas are to be occupied by vehicles which are in operating condition, currently licensed, and insured for on-road operation. Motor vehicle or other repairs must not be done in the rental unit or on the residential property.

Bicycles. Bicycles are to be stored in designated areas only. They must not be kept, left, or stored on a balcony or in a hallway. They must not be moved through a lobby or hallway, or placed in an elevator.

At the hearing, the Agents stated that they are relying on the following portion of term 20 as grounds for the One Month Notice.

Vehicles. Only vehicles listed in the tenancy application and no other vehicles may be parked, but not stored, on the residential property. The parking areas are to be occupied by vehicles which are in operating condition, currently licensed, and insured for on-road operation. Motor vehicle or other repairs must not be done in the rental unit or on the residential property.

Although a portion of term 20 of the tenancy agreement states that it is a material term, that is not the portion relied upon by the Landlord for issuance of this notice. It also relates only the rental unit, itself, not the parking area or common property. As a result, I find that the portion of the tenancy agreement relied on by the Landlord makes no mention of materiality of that term in the overall scheme of the tenancy agreement.

Further to this, neither party could articulate for me what a material term was, and both parties agreed that they had not read Guideline 8. I therefore find it impossible to believe that either party knew, at the time the tenancy agreement was created and entered into, what a material term even was. I most certainly am not satisfied that the parties intended to agree that the above noted portion of term 20 of the tenancy agreement was a material term of that agreement. Especially as other portions of that term and the tenancy agreement make mention of materiality of terms.

As a result, I find that the portion of the term relied upon by the Landlord for issuance of the One Month Notice under term 47(1)(h) of the Act is in fact not a material term of the tenancy agreement. Regardless, even if I had been satisfied that it was, which I am not, the Landlord has nevertheless failed to satisfy me that they complied with Guideline 8 with regards to a breach letter. The Agents even acknowledged at the hearing that that had not read Guideline 8.

As a result, I grant the Tenants' Application seeking cancellation of the One Month Notice. The Landlord's Application seeking its enforcement is dismissed without leave to reapply.

Conclusion

The One Month Notice dated July 18, 2024, is cancelled and of no force or effect. I therefore order that this tenancy continue until it is ended in accordance with the Act.

I find that term 20 of the tenancy agreement relating to vehicles is not a material term of the tenancy agreement. This is not the same as finding that it is not an enforceable term of the agreement. It simply means that the Landlord cannot end the tenancy under section 47(1)(h) of the Act in relation to it. The Tenants are therefore forewarned that if they have failed to comply with that term, the Landlord may be entitled to seek an order from the Branch that they comply with it. Failure to do so thereafter may entitle the Landlord to end the tenancy under section 47(1)(l) of 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: September 25, 2024

Residential Tenancy Branch