DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the Notice). Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant confirmed that a representative of the landlord handed him the Notice on September 15, 2011. The landlord's representatives confirmed that the tenant handed a copy of his dispute resolution hearing package to an employee in the landlord's office on October 4, 2011. I am satisfied that these documents were served to one another in accordance with the *Act.*

The landlord's male representative (the landlord) said that the tenant did not send the landlord a copy of all of his written evidence package. The tenant confirmed that he withheld a three page letter from the copy of the evidence package he gave to the landlord. I advised the parties that I would not be considering the contents of the tenant's three page letter that was not conveyed by the tenant to the landlord.

At the hearing, the landlord confirmed that the landlord has not made a separate application for dispute resolution. The landlord asked for an end to this tenancy and an Order of Possession if the tenant's application were dismissed.

Issues(s) to be Decided

Should the tenant's application to cancel the Notice be allowed? Has the tenant's refusal to remove a sign from one of his windows constituted a breach of a material term of his tenancy agreement? If the tenant's application were dismissed, should the landlord be issued an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, copies of the Non-Profit Housing Tenancy Agreement (the Agreement), copies of the Addendum to that Agreement, a copy of Policy #400 of the landlord's Policy Manual (the Heritage Streetscapes Policy), copies of miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the issues before me and my findings are set out below.

This tenancy in a non-profit housing property commenced on May 1, 2003. The tenant's current monthly rent is $731.00, payable in advance on the first of each month.

The landlord entered into written evidence a copy of the Notice which required the tenant to end this tenancy by October 31, 2011 for the following reason:

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

The parties agreed that the sole issue giving rise to the landlord's application to end this tenancy has been the tenant's refusal to remove a hand-written sign from a window in his rental unit that states the following:

> NO DICTATORISHIP = NO E.D.

The parties agreed that "E.D." in the sign is meant as an abbreviation for the landlord's Executive Director, one of the landlord's witnesses at this hearing. The landlord testified that the tenant has placed other signs on his window voicing similar apparent dissatisfaction with the landlord's practices and in particular the role played by the Executive Director in the affairs of this community housing society. During the hearing, the tenant said that he plans to remove the sign from his window once the housing society's Annual General Meeting occurs. The tenant also said that he plans to run for the Board of Directors of the community housing society that operates this rental property as the landlord at that Annual General Meeting.

The landlord entered into evidence a photograph of the sign which occupies approximately ¼ of a standard two pane window. The landlord did not dispute the tenant's advocate's claim that this sign is on a laneway and does not face the street. The landlord entered undisputed written evidence that the sign "is adjacent to the business office of the Society and the window is visible to all visitors to the office."

The landlord entered undisputed written evidence that the landlord had issued the tenant a September 12, 2011 letter directing him to bring himself into compliance with the terms of his Agreement by removing his sign from view. When the tenant did not comply with this written request, the landlord issued the Notice to the tenant.

The landlord cited the following provision of Section 18 of the Addendum to the tenant's Agreement in maintaining that the tenant had breached a material term of his Agreement.

> *18. <u>Alteration of Premises (see also Heritage Consideration)</u>*

Tenants must obtain the prior written consent of the landlord to do any of the following:

a. Place any notice or sign on the residential premises or the residential property;...

The landlord also maintained that the following provision in its Heritage Streetscapes Policy demonstrated that the tenant had breached a material term of his Agreement:

...Tenants are not permitted to display or erect signs, billboards or advertising material of any kind on the buildings, in yards or on porches or desks...

The intent of the Heritage Streetscapes Policy reads as follows:

To preserve the unique Victorian and Edwardian streetscapes of the MH community (in accordance with the City of Vancouver lease and custody of the public trust).

Analysis

A landlord may end a tenancy for breach of a material term but the standard of proof is high. To determine the materiality of a term, a dispute resolution officer will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach.

Residential Tenancy Policy Guideline 8 provides the following guidance in considering applications to end a tenancy on the basis of the alleged breach of a material term of a tenancy agreement.

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. 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 tenancy 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 landlord has placed in the agreement that one or more terms are material is not decisive. The arbitrator (the dispute resolution officer) will look at the true intention of the parties in determining whether or not the clause is material…

Much of this dispute appears to involve the way that the tenant chose to express his displeasure with the existing operation of the community housing society and his apparent interest in seeking election to the new Board of Directors at the upcoming

Annual General Meeting. These issues are not before me and my only jurisdiction in this matter involves consideration of the tenant's application to cancel the landlord's Notice for the alleged breach of a material term of the tenancy Agreement. The tenant's refusal to speak with the landlord's representatives about the nature of his concerns has little bearing on whether the signage restrictions constitute a material term of this tenancy and if so whether that term has been breached. The signage restriction is either a material term of this tenancy or it is not. If it is a material term, the sign in question has either breached the material term or it has not.

I first direct my consideration to the wording of the tenancy Agreement to determine if a breach of the signage terms of that Agreement could constitute a beach of a material term of that Agreement. If a breach of that term, as set out in Section 18.a. of that Agreement, could constitute a potential breach of a material term of that Agreement, I then must consider this particular situation to determine if the tenant's refusal to remove his sign constitutes a breach of a material term of his tenancy Agreement.

The wording of Section 18.a. of the Addendum to the tenant's Agreement is extremely broad and can be interpreted different ways. For example, is the intent of this provision to exclude all of the many signs that tenants place on their windows? The tenant testified that he placed a sign registering his support for the local hockey team, the Vancouver Canucks, on his window at one point as did many others in the city. He also entered into evidence photographs of artwork placed in the windows of other tenants that could be viewed as contravening Section 18 of the Addendum. There is also ambiguity as to whether the placement of a notice or a sign "on the residential premises or the residential property" is reserved for notices or signs placed on the external walls, decks or porches or if this restriction could be extended, as the landlords maintained, to the interior surface of windows.

Similar ambiguities arise in attempting to interpret the provision in the landlord's Heritage Streetscapes Policy (Policy #400) restricting tenants from displaying or erecting "signs, billboards or advertising material of any kind on the buildings, in yards or on porches or desks." When asked as to how the tenant's placement of a sign on the interior of one of his windows contravened this Policy, the landlord again asserted that the interior surface of one of the tenant's windows was placement of a sign "on the building."

I find that in a certain fact situation a breach of Section 18.a. of the Addendum to the Agreement could constitute a breach of a material term of an Agreement. For example, the landlord might be able to end a tenancy for cause on the basis of a breach of this section of the Agreement had the tenant attached a large banner or sign using specific

or profane references to individuals employed by the landlord. Slanderous signs hung outside the building vilifying an individual or individuals employed by the landlord might also represent a breach of a material term of this Section of the Agreement. Despite such examples, I find it difficult to accept that there has been any agreement between the parties that the most trivial breaches of the signage provision conveys the right to end the tenancy Agreement.

I now turn to whether the action taken by the tenant constituted a breach of a material term of his tenancy Agreement. As outlined above, the circumstances of each case must be carefully considered in determining whether a term of an Agreement is material to the tenancy and whether the action taken by a tenant does in fact constitute a breach of a material term of an Agreement.

Based on a plain reading of section 18.a. of the Addendum and the landlord's Heritage Streetscapes Policy, I find little merit in the landlord's assertion that the tenant's placement of a relatively small sign on the interior of one of his windows constitutes placement of a sign "on the building." Although windows may technically be part of the building, so are internal bearing walls, fireplaces and stairwells. It would be clearly absurd to try to enforce the provisions of section 18.a. of the Addendum and the Heritage Streetscapes Policy to internal features of a rental unit within the landlord's property. Rather, I interpret the intention of the provisions in both the Addendum and the Heritage Streetscapes Policy as requiring far more than the placement of a small sign on the inside of a tenant's window. These provisions would appear to be designed to prevent tenants from displaying advertising, notices or signs on the exterior of the building.

I also note that the landlord's Heritage Streetscapes Policy is not part of the tenant's Agreement or even the Addendum to that Agreement, but a policy that the landlord tries to the extent possible to administer within this housing complex. The landlord can only enforce a breach of a material term of the tenancy agreement, and not a breach of one of the landlord's own internally developed policies. However, even if that significant deficiency were set aside, the wording of that policy provides specific references to certain types of features, most of which would appear to be outside the tenant's exclusive internal living space.

Although the landlord alluded to the lease with the City of Vancouver, the landlord did not enter into evidence any information about that lease or the repercussions if the landlord did not abide by a strict interpretation of its Heritage Streetscapes Policy.

A plain reading of the Agreement and the 26 section Addendum to that Agreement does not lead me to conclude that a tenant's failure to remove a sign of the size and wording of that involved in this case would represent a breach of a material term of the tenancy Agreement. I find that the size, location and specific content of the sign, although no doubt disconcerting to the landlord's Executive Director, is not so flagrant and objectionable that it constitutes a breach of a material term of the tenant's Agreement. There are no personal identifiers in the tenant's sign. In fact, the wording of the sign is somewhat obscure to the extent that a casual reader of the sign might need assistance in interpreting the meaning of the tenant's sign. Without knowledge of the abbreviation "E.D." little meaning could be attached to the tenant's sign. However, the landlord is very likely correct in his observation that other tenants in the complex would be able to accurately decipher the meaning of the tenant's sign.

For the reasons outlined above, I find that a serious and major contravention of the signage provisions of the Addendum to the Agreement could potentially constitute a breach of a material term of the tenant's Agreement. However, in this case I find that the tenant's placement of a relatively small, obscurely worded sign on the interior of one of his windows fails to meet the high standard required to demonstrate that the tenant's alleged contravention of the signage provisions in the Addendum to the Agreement truly constituted a breach of a material term of this tenancy Agreement. For these reasons, I allow the tenant's application to dismiss the landlord's 1 Month Notice handed to the tenant on September 15, 2011.

Conclusion

I allow the tenant's application to cancel the landlord's Notice. The effect of this decision is that this tenancy continues. 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*.