Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT CNC OPC MNDL FF

Introduction

This hearing was convened in response to applications by both the tenant and the landlords pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The application from the landlords requested:

- an Order of Possession for cause pursuant to section 55 of the *Act*; and
- a Monetary Order pursuant to section 67 of the *Act* for money owed for damage or loss under the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The application from the tenant requested:

- a cancellation of the Notice to End Tenancy for Cause pursuant to section 47 of the *Act;*
- an Order allowing the tenant access to the access to the unit for the tenant or the tenant's guest pursuant to section 70 of the *Act*.

Both landlords and the tenant attended the hearing. The landlords were represented at the hearing by their counsel, M.C. The tenant acknowledged receiving two separate 1 Month Notices to End tenancy along with the landlords' evidentiary package and notice of hearing. The first notice to end tenancy dated May 7, 2019 was posted on the tenant's door, while the second notice to end tenancy dated May 31, 2019 was given to the tenant in person. Pursuant to section 89(2) & 90 of the *Act* the tenant is deemed served with the May 7, 2019 notice on May 10, 2019 three days after its posting, while the tenant is found to have been served with the May 31, 2019 notice on the same day as its service. I find there are therefore no issues related to the date on which the tenant applied to dispute the notices to end tenancy.

Following opening remarks, counsel for the landlords questioned the admissibility of the tenant's evidentiary packages submitted. The landlords' counsel said he had only been received "three or four days" prior to the hearing and were sent via email to his law firm. The tenant confirmed she had served her evidence in this manner and argued that the lateness of the evidence should be excused because she had been unaware that the rules of the RTB differed from those in Family Court.

Residential Tenancy Rule of Procedure 3.3 states, "Evidence support a cross-application must be received by the other party and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing" while Rule 3.17 states, "Evidence not provided to the other party and the Residential Tenancy Branch in accordance with the *Act* may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence that was not available at the time that their application was made or when they served and submitted their evidence." I find the tenant was aware of the need to check and meet deadlines related to filing evidence and failed to serve their evidence in a manner allowable under the *Act* and within the designated timelines, for these reasons I decline to consider the tenant`s evidentiary package.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession? Can the tenant cancel the notice to end tenancy?

Is the landlord entitled to a monetary award? Can the landlord recover the filing fee?

Should the landlord be directed to allow the tenant access to the property?

Background and Evidence

The parties agreed that this fixed-term tenancy began on February 1, 2019 and was set to expire on January 31, 2020. Monthly rent is $1,400.00 while a security deposit of $700.00 paid at the outset of the tenancy continues to be held by the landlords.

On May 7, 2019 the landlords issued a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") citing the following reasons:

- Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- Breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

On May 31, 2019 a second 1 Month Notice was issued to the tenant. The reason cited on this notice was listed as follows:

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

At the hearing, the landlords' counsel M.C., questioned landlord J.L. on her reasons for issuing two separate 1 Month Notices. J.L. explained that several incidents throughout the tenancy between the landlords and tenant led the landlords to issue two separate notices to end tenancy. Specifically, landlord J.L. cited conflicts and incidents that occurred in March, April and May 2019 along with the tenant's failure to comply with written warnings related to their concerns about the presence of a dog on the property, as reason for the issuance of the notices to end tenancy.

Landlord J.L. testified that she had provided the tenant with several verbal warnings related to the presence of a dog on the property and said that it she and landlord G.B. had made it very clear to the tenant at the outset of the tenancy that no pets were permitted. Landlord J.L. described having a great fear of dogs and described several instances where the tenant permitted a guest to bring a dog on to the property. Specifically, the landlord argued that the tenant allowed a dog to visit the property on April 29, 2019 and May 5, 2019 despite written notice to the tenant on April 17, 2019 reminding her of the "no pets" rule. This warning letter said, "This is to remind you that no pets are allowed on said property and you agreed to the no pets rule when you signed the lease. This is a direct breach of your lease agreement under Part 2, Division 2, Section 18." The warning letter then cited the presence of a pet on the property on April 5, 10 (x2) and 17, 2019. The landlord testified that a despite this warning letter a dog visited the property on May 5, 26 and 28, 2019 and again in June 2019. The landlord explained that some of these incidents were captured by a security camera which was installed on the front property following concerns the landlords had related to the presence of a dog on the property.

Moreover, landlord J.L. explained that the dog had been permitted to remain on the property overnight “in early March.” As part of their evidentiary package, the landlords each provided sworn affidavits describing their interactions with the tenant and their dealings with the dog. The affidavit from landlord G.B. stated, “On January 15, 2019 M.R. came to the property to view the rental suite and…[we] had a lengthy conversation regarding our expectations of our tenants…These expectations were not limited to, having no pets on the property at anytime, only using the property located above the privacy line at the house, and staying off the rest of the property.” The affidavit from landlord J.L. stated, “On January 15, 2019 M.R. came to the property to view the rental suite…[we] had a lengthy conversation regarding our expectations of our tenants. The rental application and add (sic) we placed is attached hereto as attachment A…These expectations included but were not limited to, (a) having no pets on the property at anytime as I have a long standing fear of strange dogs, (b) only using the property located above the privacy line at the house, and staying off the rest of the property.”

A review of the signed tenancy agreement shows it is a copy of a standard form tenancy agreement produced by the Residential Tenancy Branch. It is silent on the issue of pets, while the original advertisement contains a reference to pets being prohibited. The advertisement to which the tenant responded wrote as follows, “Swing on your covered front porch or enjoy the sun or stargazing on your back deck. This bright, spacious 2 bed, 1 bath, upstairs suite is on 5 acres just outside town. Very clean, bright kitchen. Fenced front yard, parking for 2 vehicles. In suite laundry, gas fireplace. No pets. No smoking. Basement suite is owner occupied. Looking for quiet clean tenant.”

In addition to the issue of dogs on the property, the landlord said she had significant concerns about the manner in which the tenant was using the acreage on the property for recreational purposes. The landlord alleged that on May 5, 2019 the tenant had attempted to strike the landlord with her ATV, while also detailing an incident from April 20, 2019 involving unauthorized use of the ATV on the property. Further to these incidents, the landlord argued the tenant had created an unsightly mess on the property through garbage and other items left in the front yard area. The landlords issued a warning letter related to these concerns on April 30, 2019. These matters were detailed by both landlords in their sworn affidavits and by landlord J.L. in her testimony.

The final issue cited by the landlord related to the issuance of the 1 Month Notices concerned the tenant’s use of the bathtub in the rental unit. The landlord lives below the tenant on the main floor of the home. The landlord said the tenant’s actions had caused flooding to occur in the unit and as a result they had incurred significant expenses

related to the damage. The landlord testified that damage to the bathtub of the rental unit was caused by the actions of the tenant.

The tenant disputed the landlords' version of events and argued for a cancellation of the notices to end tenancy. The tenant acknowledged the presence of a dog on the property on the dates listed by the landlord but disputed any danger presented by this animal. Furthermore, the tenant said the animal was only ever on the property to visit for a short-while. The tenant concurred that she was aware the landlords had requested privacy for the back yard, but she argued that her actions on the ATV were consistent with her understanding related to appropriate use of the property. She said that she did not wish to disturb the landlords in the area of the property they sought for their own use and instead restricted her use to the further reaches of the acreage. She described her use of the property as "reasonable" and explained it was far away from the back yard area that was designated for landlord's use. The tenant said she had no interest in disturbing the landlord's in their back area.

The tenant sought an order allowing her to access the entirety of the property. She argued that many of the issues described above, stemmed from the landlord's refusal to allow her access to the entire property as she was entitled under the terms of the tenancy agreed to by the parties. The tenant alleged the landlords had blocked access to the entire property by placing locks on the gates and logs blocking entry to certain portions of the grounds. Furthermore, the tenant described that she felt "harassed" by the landlords and said she had significant concerns related to the presence of a security camera at the front of her rental area.

In addition to the matters detailed above, the landlords have applied for a monetary award of $727.51. The landlords said this figure represents costs associated with repairing a bathtub in the rental unit. The landlords argued that the tenant caused damage to the tub through her negligence. The landlords detailed several steps they took to address the flooding issues caused by a faulty tub and included numerous receipts associated with its repair. The tenant disputed the figure submitted by the landlords and argued that any damage present in the tub, along with any resulting flood issues, were the result of pre-existing damage.

Analysis – Notice to End Tenancy

The parties have each applied for a determination to be made related to the notices to end tenancy that was served on the tenant. The landlords are seeking to enforce these

notices, while the tenant has applied to have the notices cancelled. Residential Tenancy Rule of Procedure 6.6 states, “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…the onus to prove their case in on the person making the claim…the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.”

I will consider the reasons cited in the May 7, 2019 and the May 31, 2019 notices together.

The landlords argued that a series of events between March, April and May 2019 led to the issuance of the 1 Month Notices. The landlord provided detailed written submissions, along with lengthy testimony and a significant number of documents in support of their application. After a careful review of all items submitted by the landlords and in consideration of their testimony, along with that of the tenant, I find it evident that the “no pets” clause formed a part of their tenancy agreement. During the hearing, I found landlord J.L. to be a credible witness who was able to accurately recall dates and events in detail. Furthermore, I find significant discussion related to the “no pets” clause took place between the parties both before and after the tenancy was entered into.

Landlord J.L. explained she had a great fear of dogs and therefore wished for no dogs to be present on the property. The tenant acknowledged that a dog had occasionally been on the property but argued the dog did not pose a danger. The tenant also argued that the dog was only on the property infrequently. The landlords argued the presence of the dog on the property was one of the reasons they issued Notices to End tenancy, saying the tenant had breached a material term of their tenancy agreement.

RTB Policy Guideline #8, describes a material term as 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…*

While the landlords provided the tenant with a warning letter, I find that the text of the letter fails to meet two of the four requirements listed in Policy Guideline #8. The letter reads, “This is to remind you that no pets are allowed on said property and you agreed to the no pets rule when you signed the lease. This is a direct breach of your lease agreement under Part 2, Division 2, Section 18”. It is noteworthy that this letter provides no warning of repercussions that may result from such a breach, while also failing to provide a deadline to fix such a breach. For these reasons, I find that the tenant was not provided with sufficient notice to address the issues related to “no pets” and I decline to issue an Order of Possession based on a material breach of the tenancy agreement.

The landlords cited two other reasons for ending with their notices. These were:

- Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and

- Tenant or a person permitted on the property by the tenant has put the landlord’s property at significant risk.

As mentioned previously, landlord J.L. testified that a series of negative events beginning in March 2019 contributed to their decision to issue a notice to end tenancy. Amongst the issues cited by the landlords were debris in the front area of the property, the presence of the tenant in areas of the property which were designated for the landlord’s use, an allegation of the tenant driving her ATV at landlord G.B. and damage to the property through flooding of the bathtub.

I find the landlords failed to demonstrate how the presence of the tenant in the private areas of the property, along with the debris left by the tenant meet the criteria of the Notices to End tenancy as described above. While an annoyance and certainly a visual blight there was no evidence presented to show that this debris constituted a health hazard and, I find no reason why the mere presence of the tenant in an area of the property or debris left near the house could put the landlord's property at significant risk, jeopardize the health or safety of the landlord or constituted a breach of a material term. There was no evidence that the tenant was destroying the property in any manner, or engaging in any illegal activity. The landlord presented arguments related to their insurance policy and the extent to which certain activities were restricted; however, again, I find those arguments do not relate to the issues identified in the Notices to End tenancy.

Of more concern are the allegations brought by the landlords related to an incident on May 5, 2019 when the landlord was apparently nearly struck by an ATV ridden by the tenant, along with purported flooding of the upstairs rental unit.

The tenant disputed the landlords' characterization of these events and denied attempting to hit the landlord with her ATV. It is evident that an incident took place between the parties and clear that the relationship between the landlords and tenant has broken down, however, the evidence presented by the landlords in their application does not clearly demonstrate that the tenant attempted to jeopardize the health or safety of the landlord. I note in particular that the landlords did not report the ATV incident to the police as one would expect if it caused them serious concern at the time it occurred.

While the information related to the flooding of the bathtub is relevant to the dispute, I am not satisfied by the evidence that the tenants purposely damaged the landlord's property in such a manner that would warrant an Order of Possession. The reasons listed on the Notices to End tenancy were described above, and I find that any resulting damage to a bathtub falls beyond the scope of the notices. I do not accept the landlords arguments that the flooding in the tub presented a significant risk to their health, breached a material term of the tenancy agreement or put the property at significant risk. The flooding damage was repaired and there little evidence of longer term damage was presented.

For these reasons, I find the tenant was successful in her application to cancel the 1 Month Notices issued on May 7, 2019 and May 31, 2019.

Analysis – Monetary Award

The landlords have applied for a monetary award of $727.51. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove their entitlement to a claim for a monetary award.

Section 32(3) of the *Act* states, "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant." The landlords argued the actions of the tenant led to flooding of the bathtub that resulted in damage to the ceiling area and led to a significant repair of the tenant's bathroom. The tenant denied causing any damage and alleged the bathtub was damaged prior to her arrival in the suite.

Based on a review of the evidence and having considered the testimony of both parties, I find the landlords have demonstrated their entitlement to a monetary award. I find the receipts presented all clearly show the expenses incurred to repairs necessary in the tenant's bathroom and I find little evidence in support of the tenant's argument that this damage was pre-existing. For these reasons, I allow the landlords to recover the entire amount of their application for a monetary award.

Analysis – Access to Property

The tenant has applied to enforce a term of their tenancy agreement that she argued allowed her to access the entirety of the five acre property.

Section 6(3)(c) of the *Act* states, "A term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it." A review of the tenancy agreement, along with a close reading of the original advertisement for the rental unit, shows no offer by the landlords entitling the tenant to access the entirety of the property. The advertisement clearly states the

property is an “upstairs suite located on 5 acres”. This merely indicates the suite for rent is located on acreage, not that that this acreage is available for tenant’s use. I find the tenant has produced no evidence in support of her argument that she should be entitled to access of the entire property. For these reasons, I dismiss this portion of the tenant’s application.

Conclusion

The tenant was successful in her application to cancel the landlord’s notices to end tenancy dated May 7, 2019 and May 31, 2019. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant’s application for access to the rental property is dismissed.

The landlords’ application for a monetary order was successful. As the landlords’ were partially successful in their application, they may recover the $100.00 filing fee. The landlords are issued a monetary award of $827.51 in full satisfaction of their monetary award inclusive of a return of the filing fee. The landlords are provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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.

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 5, 2019

Residential Tenancy Branch