Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WENTWORTH PROPERTIES INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession based on the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) of July 4, 2019, pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. As the tenant confirmed that they received the 1 Month Notice posted on the tenant's door by the landlord on July 4, 2019, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the tenant confirmed that they received a copy of the landlord's dispute resolution hearing package, I find that the tenant was duly served with this package in accordance with section 89 of the *Act.* Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause based on the 1 Month Notice? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began in December 2010. Monthly rent is currently set at $732.00, payable in advance on the first of each month. The landlord continues to hold the tenant's $325.00 security deposit paid when this tenancy began. The parties agreed that the landlord has accepted payments from the tenant for use and occupancy only that enable the tenant to remain in the rental unit until at least November 30, 2019.

The landlord entered into written evidence a copy of the 1 Month Notice of July 4, 2019, requiring the tenant to end this tenancy by August 31, 2019 for the following two reasons identified on that Notice:

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

Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

In this case, the order and the alleged breach were the tenant's failure to obtain tenant's insurance. In this regard, there is undisputed written evidence that the tenant had made a commitment at the May 24, 2019 hearing to obtain tenant's insurance by July 1, 2019. That hearing considered the tenant's application to cancel the landlord's previous 1 Month Notice. The Arbitrator presiding over that hearing reported this term of the parties' settlement agreement in their May 24, 2019 decision as follows:

> *...The tenant agrees to provide the landlord with a copy of his valid tenant's insurance by July 1, 2019 and thereafter as each insurance contract expires...*

Since the tenant had not complied with this commitment by July 4, 2019, the landlord issued the 1 Month Notice.

Although the tenant gave sworn testimony and written evidence that they spoke to a representative of the landlord on July 5, 2019, after receiving the landlord's 1 Month Notice, the tenant did not apply to cancel the 1 Month Notice. The tenant maintained that the landlord's representative who was not in attendance at this hearing told the tenant that as far as the landlord's representative knew there was nothing to worry about as the tenant had provided the landlord with proof on July 5, that they had obtained tenant's insurance for their rental unit. The tenant confirmed that they never asked that representative to put anything in writing to confirm that the landlord would not be pursuing the 1 Month Notice. Landlord representative BC (the landlord) said that

they spoke with the landlord representative referenced by the tenant in their written evidence and that representative had no recollection of having spoken with the tenant about this matter.

The tenant provided written evidence and sworn testimony that they encountered difficulty in meeting the July 1, 2019 deadline to provide proof of having obtained tenant's insurance for a variety of reasons. When the tenant committed to obtain tenant's insurance, they were unaware that insurance companies would require a credit card in order to accept payment. As the tenant did not have one, they had to make arrangements for a family member to make this payment, which the insurance company only agreed to accept shortly before the deadline was to expire. By the time the company accepted the credit card payment, it was too late on a long weekend for written confirmation to be provided to the tenant that the tenant could then forward to the landlord. The tenant also entered written and photographic evidence that they were involved in a serious motor vehicle accident on July 1, 2019, requiring hospitalization and considerable rehabilitation and treatment for their injuries.

The landlord testified that the tenant selected the July 1, 2019 date for the provision of proof of having obtained tenant's insurance to the landlord. The landlord claimed that the tenant had been given ample time to produce the required documents to demonstrate compliance with their settlement agreement reported in the previous Arbitrator's decision.

At this hearing, the parties also discussed the tenant's assertion that the tenant had been hampered in their efforts to obtain subsidized housing because the landlord had failed to provide them with a letter confirming that no valid Notices to End Tenancy had been issued to them. The tenant maintained that this matter had been discussed and agreed to at the previous arbitration hearing, but that the previous Arbitrator had failed to record this element of their settlement agreement in that decision. At this hearing, the landlord had no objection to providing the tenant with a letter confirming that no valid Notices to End Tenancy had been issued against the tenant prior to July 4, 2019, although the landlord maintained that the 1 Month Notice currently before me was valid.

Analysis

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. I find that the tenant has failed to file an application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. On this basis, the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, August 31, 2019. However, in order to obtain an Order of Possession after a failure of the tenant to apply to cancel a 1 Month Notice, section 47(3) of the *Act* requires that "a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Section 52 of the *Act* reads in part as follows:

> *In order to be effective, a notice to end tenancy must be in writing and must...*
>
> *(a) be signed and dated by the landlord or tenant giving the notice,*
> *(b) give the address of the rental unit,*
> *(c) state the effective date of the notice,*
> *(d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
> *(e) when given by a landlord, be in the approved form.*

Although I am satisfied that the landlord's 1 Month Notice entered into written evidence was on the proper RTB form, as set out below, paragraphs 47(1)(h) and (j) of the *Act* outline how a landlord may end a tenancy for the grounds cited in the landlord's 1 Month Notice:

> ***47*** *(1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:...*
>
> *(h)the tenant*
>
> *(i)has failed to comply with a material term, and*
> *(ii)has not corrected the situation within a reasonable time after the landlord gives written notice to do so;...*
>
> *l)the tenant has not complied with an order of the director within 30 days of the later of the following dates:*
>
> *(i)the date the tenant receives the order;*
> *(ii)the date specified in the order for the tenant to comply with the order....*

In this case, I find on a balance of probabilities that the grounds stated in the landlord's 1 Month Notice are incorrect and do not properly state a ground for ending this tenancy in accordance with paragraphs 47(1)(h) or (l) of the *Act*.

At the hearing, the landlord confirmed that the alleged breach of a material term of the Residential Tenancy Agreement (the Agreement) between the parties relied on a determination that the settlement reached between the parties and as reported in the May 24, 2019 decision established that obtaining tenant's insurance by July 1, 2019 was a material term of the Agreement. The landlord confirmed that the only reference to tenant's insurance in either the Agreement or the Addendum to that Agreement was at section 13 of the Addendum, which reads as follows:

> *...Tenants are advised to carry adequate insurance coverage for fire, smoke and water damage, and theft, on their own possessions, and may be held liable for accidental injury, accidental damage or accidental breakage arising from the tenant's abusive, wilful and negligent and or omission, on that of his guest, in his use of the landlord's services or property.*

In considering the first of the grounds cited in the landlord's 1 Month Notice, I have taken into consideration Residential Tenancy Branch (RTB) Policy Guideline 8, which reads in part as follows;

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. To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term. The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

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.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

In their written evidence and in their sworn testimony for this hearing, the landlord did not claim that they provided the tenant with any written notice that the tenant had breached a material term of their Agreement. In fact, as noted above, the only reference to tenant's insurance in either the Agreement or the Addendum to that Agreement was characterized as "advice" from the landlord to the tenant in section 13 of the Addendum. When asked about this issue at the hearing, the landlord could not cite anything in either their Agreement or the Addendum to that Agreement that could in any way be interpreted as a material term that had been breached by the tenant. The landlord maintained that they considered the inclusion of this provision in their settlement agreement of May 24, 2019 , as evidence that the parties considered this to be a material term of their Agreement. However, in reviewing this matter, I find on a balance of probabilities that, not only was there no agreement between the parties that having tenant's insurance was a material term of their Agreement, but the written evidence of that Agreement and Addendum reveal that tenant's insurance was not even a requirement for this tenancy. Rather this was an item where the tenant was "advised" by the landlord that they should have insurance so as to limit their exposure to losses or liability.

Although the landlord admitted at the hearing that there was no grounds for ending this tenancy on the basis of a breach of a material term of the Agreement, as outlined above, the landlord maintained that the tenant's failure to abide by the order issued by the arbitrator as per the parties' May 24, 2019 settlement of their previous dispute constituted sufficient grounds to end this tenancy for cause.

In considering this second portion of the landlord's 1 Month Notice, I first note that there is undisputed evidence that the tenant provided documentation to the landlord's company on July 5, 2019 to prove that the tenant had obtained tenant's insurance. The date identified in the previous Arbitrator's order for provision of proof of having obtained

tenant's insurance was July 1, 2019. As outlined above, paragraph 47(1)(l) of the *Act* only allows the landlord to end this tenancy for non-compliance with an order of the previous Arbitrator in the event that the tenant did not comply with that order after the expiration of 30 days after July 1, 2019. Since there is proof that the tenant did comply with this order within four days of the July 1, 2019, I find that the second of the grounds cited in the 1 Month Notice was invalid. Although I understand how the wording on the 1 Month Notice form could have been misinterpreted by the landlord, I find that the specific wording of paragraph 47(1)(l) of the *Act* did not enable the landlord to end this tenancy for the reason stated in that Notice until at least July 31, 2019.

For these reasons, I find that the landlord's 1 Month Notice did not meet the requirements of section 52(d) of the *Act* as the landlord did not identify valid grounds whereby this tenancy could have been ended at the time it was issued. In making this determination, I assure the parties that had the landlord identified a reason that could have ended the tenancy at that time for the reasons cited, whether or not the tenant agreed with them, the landlord would have met the requirements of section 52 of the *Act*, and the tenancy would have ended in accordance with section 47 of the *Act*.

I should also add that I do not interpret paragraph 47(1)(l) of the *Act* as enabling landlords to end a tenancy for non-compliance with orders issued by Arbitrators that would otherwise not entitle landlords to end tenancies. For example, non-compliance with an order from an Arbitrator to remove an occupant who had been significantly interfering with or unreasonably disturbing other tenants in the building may very well enable a landlord to end a tenancy pursuant to paragraph 47(1)(l) of the *Act*. By contrast, another type of order that parties might agree to at a hearing and which are reported as orders in a decision of an Arbitrator might be of far less significance and would not, on their own, in any way entitle a landlord to end a tenancy for cause. For example, I do not believe that this provision of the *Act* was designed to enable a landlord to end a tenancy pursuant to paragraph 47(1)(l) of the *Act* if a tenant did not implement a commitment to weed the shared vegetable garden or to refrain from using an outside barbeque. In other words, I believe that the nature of the contravention and the extent to which the contravention would otherwise have entitled a landlord to end a tenancy for cause would also need to be taken into account. I interpret this section of the *Act* as enabling landlords to end a tenancy for failures to implement orders that would also entitle landlords to end a tenancy for other grounds, rather than a prescriptive approach to any and every failure to implement even the most innocuous of provisions of a settlement agreement included in an Arbitrator's decision.

Viewed in the context of this application, since the Agreement or the Addendum to that Agreement did not include a requirement that the tenant obtain tenant's insurance, the tenant's expressed willingness at the previous hearing to obtain such insurance does not transform this provision into a material term of the Agreement between these parties. If the landlord believed that their settlement agreement on May 24, 2019 did establish this as a material term of their tenancy, then the landlord needed to send the tenant correspondence that would comply with the provisions of RTB Policy Guideline 8, as outlined above.

At the hearing, the landlord had no objection to providing the tenant with a letter confirming that no valid Notices to End Tenancy have been issued against the tenant. The tenant maintained that this matter was discussed during the last arbitration hearing and that the tenant would like such a letter to assist the tenant in their ongoing attempts to find subsidized housing. For these reasons, I order the landlord to provide the tenant with a letter confirming that no valid Notices to End Tenancy for Cause have been against the tenant to date.

Conclusion

I dismiss the landlord's application without leave to reapply. The 1 Month Notice of July 4, 2019 is set aside and of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I order the landlord to provide the tenant with a letter confirming that no valid Notices to End Tenancy for Cause have been issued against the tenant. I order the landlord to issue this letter to the tenant before December 1, 2019.

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: November 05, 2019

Residential Tenancy Branch