Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC (Landlord)
FFT, CNC, OLC, LRE, DRI (Tenant)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed their application December 09, 2020 (the "Tenant's Application"). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated November 22, 2020 (the "Notice");
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement;
- To suspend or set conditions on the Landlord's right to enter the rental unit;
- To dispute a rent increase that is above the amount allowed by law; and
- To recover the filing fee.

The Landlord filed their application December 10, 2020 (the "Landlord's Application"). The Landlord applied for an Order of Possession based on the Notice.

The Tenant and Landlord appeared at the hearing.

The Tenant sought an adjournment of the hearing at the outset and stated as follows. The Tenant broke their ankle and is on pain medication. The Tenant was going to submit their evidence for the hearing in person the week before the hearing but could not do so because of their broken ankle.

The Landlord did not agree to an adjournment.

I considered rule 7.9 of the Rules of Procedure (the "Rules") which states:

> 7.9 Criteria for granting an adjournment
>
> Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:
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> - the oral or written submissions of the parties;
> - the likelihood of the adjournment resulting in a resolution;
> - the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
> - whether the adjournment is required to provide a fair opportunity for a party to be heard; and
> - the possible prejudice to each party.

I did not allow an adjournment for the following reasons. The Tenant did not provide evidence to support that they broke their ankle or are on pain medication such that they could not submit their evidence for the hearing or participate in the hearing as scheduled. There are methods to submit evidence other than in person. The Tenant filed their application December 09, 2020 and had almost three months to submit evidence. The Tenant should not have waited until the week before the hearing to submit evidence and should have submitted evidence in December. I found the need for an adjournment resulted from the Tenant not being diligent in preparing for the hearing well in advance of the hearing. I found an adjournment would prejudice the Landlord given this matter deals with a possible end to the tenancy.

I told the parties I would not allow an adjournment and that we would proceed with the hearing.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing packages and Landlord's evidence.

The Tenant testified that they received the hearing package for the Landlord's Application but no evidence from the Landlord, other than a letter dated January 17, 2021 and a text message dated November 16, 2020.

The Landlord testified that all evidence uploaded was served on the Tenant and that the evidence the Tenant states was not received was served December 17, 2020. The Landlord could not point to further evidence showing their evidence was served on the Tenant December 17, 2020.

Pursuant to rule 3.5 of the Rules, the Landlord was required to prove service of their evidence on the Tenant.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their onus of proof.

Here, the Landlord testified that their evidence was served on the Tenant and the Tenant testified that the Landlord's evidence was not served on them. The Landlord could not point to further evidence showing their evidence was served. Therefore, I was not satisfied the Landlord's evidence was served on the Tenant as required by rule 3.14 of the Rules.

I heard the parties on whether the Landlord's evidence should be admitted or excluded pursuant to rule 3.17 of the Rules. The Tenant submitted that the evidence should be excluded because they have not seen it. The Landlord continued to take the position that the evidence was served.

Pursuant to rule 3.17 of the Rules, I excluded the Landlord's evidence, other than the letter dated January 17, 2021 and text message dated November 16, 2020, as I found it would be unfair to consider evidence the Tenant had not seen and could not address at the hearing when I was not satisfied it was served as required. I have also admitted the Notice and tenancy agreement between the parties given the nature of these documents.

The Landlord testified that they did not receive the hearing package for the Tenant's Application. The Tenant testified that the hearing package was taped to the Landlord's door December 11, 2020. The Tenant acknowledged they had not submitted evidence of service.

Pursuant to section 59(3) of the *Act* and rule 3.1 of the Rules, the Tenant was required to serve the hearing package on the Landlord. Pursuant to rule 3.5 of the Rules, the Tenant was required to prove service of the hearing package.

As already stated, when one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their onus of proof.

Here, the Tenant testified that the hearing package was served on the Landlord and the Landlord testified that the hearing package was not served on them. In the absence of further evidence to support the Tenant's testimony about service, I was not satisfied the hearing package was served on the Landlord.

Further, even if the Tenant served the hearing package by posting it to the Landlord's door, this method of service is not permitted by section 89(1) of the *Act* which sets out the ways in which a hearing package must be served.

In the circumstances, I was not satisfied of service of the hearing package for the Tenant's Application. I told the parties this and explained the above. At this point, the Tenant stated for the first time that they actually handed the hearing package to the Landlord because the Landlord came and opened the door. The Landlord denied this occurred. I did not accept that this occurred as I found the Tenant would have stated this when asked about service and would not have stated that the hearing package was posted to the door of the rental unit. I found the Tenant was changing their testimony after being told that the method of service did not comply with section 89(1) of the *Act*.

Given I was not satisfied of service of the hearing package for the Tenant's Application, I dismissed the Tenant's Application with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?

Background and Evidence

The Tenant testified that they moved into the rental unit July 01, 2016. A written tenancy agreement was submitted and the parties agreed it is accurate. The agreement started March 01, 2020 and was for a fixed term ending June 30, 2020.

The Notice was submitted as evidence. The grounds for the Notice are:

1. Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord and seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

2. Breach of a material term.

The Details of Cause list two issues. First, the Tenant denying entry for an inspection November 18, 2020. Second:

> None [sic] compliance with an order under legeslation [sic] section 62 of the act and section 47 (1)(l) by breaching material term of tenancy for hiding and keeping pet at rental unit…on November 18, 2020…

The Landlord testified that the Notice was served on the Tenant by registered mail and provided Tracking Number 1. I looked Tracking Number 1 up on the Canada Post website which shows the package was sent November 23, 2020. The website shows the package was sent out for delivery and delivered on December 01, 2020. The Tenant agreed they received the Notice by registered mail and said December 01, 2020 sounds correct.

In relation to the grounds for the Notice, the Landlord confirmed the first issue relates to the Tenant denying entry to the rental unit for an inspection which was to occur November 18, 2020. The Landlord testified that they provided the Tenant proper written notice of the inspection. The Landlord testified that the Tenant sent a text message about postposing the inspection. The Landlord testified that they attended the rental unit and attempted to enter but the Tenant had locked them out and would not allow them into the rental unit. The Landlord acknowledged this was the only time the Tenant has denied entry to the rental unit.

The Tenant testified that they asked to reschedule the inspection because they were self-isolating due to the pandemic and their daughter contracting COVID-19. The Tenant testified that they wrote a letter advising the Landlord of this and taped it to the door of the rental unit. The Tenant testified that they told the Landlord they were self-isolating through the window the date of the inspection when the Landlord attended the rental unit.

In reply, the Landlord denied that the Tenant had a letter taped to the door of the rental unit about self-isolating.

In relation to the second issue, the Landlord testified that the Tenant had a cat in the rental unit November 18, 2020 contrary to the term in the tenancy agreement which states, “no smoking and no pets”. The Landlord testified that he saw a cat in the rental unit November 18, 2020.

The Tenant denied there was a cat in the rental unit November 18, 2020 and testified that there has not been a pet in the rental unit since June of 2020.

The parties have been involved in three prior RTB files noted on the front page of this decision.

Analysis

The Notice was issued pursuant to section 47 of the *Act* and the following subsections:

> 47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> > (d) the tenant or a person permitted on the residential property by the tenant has
> >
> > > (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
> > >
> > > (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(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;

The Tenant had 10 days from receipt of the Notice to dispute it pursuant to section 47(4) of the *Act*. Based on the Canada Post website information, I am satisfied the Tenant received the Notice December 01, 2020. The Tenant filed the Tenant's Application December 09, 2020, within time. However, the Tenant's Application has been dismissed with leave to re-apply.

Section 55 of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

However, the Landlord must still prove they had grounds to issue the Notice pursuant to rule 6.6 of the Rules.

The Notice is based on two issues. First, the Tenant denying entry for an inspection November 18, 2020. Second, the Tenant having a cat in the rental unit November 18, 2020.

In relation to the first issue, I do not accept that the Tenant denying entry to the rental unit for an inspection once during a tenancy that has been ongoing for more than four years is sufficiently serious to warrant ending the tenancy. I do not accept that denying entry once in a four year period amounts to a significant interference or seriously jeopardizing the lawful right of the Landlord, both of which are high thresholds. I note that there is insufficient evidence before me showing the Landlord needed to enter the

rental unit on an urgent basis on November 18, 2020. I decline to uphold the Notice on the basis that the Tenant denied entry November 18, 2020.

The breach of a material term relates to the Tenant having a cat in the rental unit November 18, 2020. I decline to uphold the Notice on this basis for two reasons.

First, I am not satisfied the Tenant had a cat in the rental unit November 18, 2020 because the parties gave conflicting testimony on this point and the Landlord did not provide any evidence to support their position such as a photo or witness statement. In the circumstances, I am not satisfied the Tenant was breaching a term of the tenancy agreement on November 18, 2020.

Second, the issue of a breach of a material term in relation to pets has already been addressed in File Numbers 2 and 3 where the Arbitrator stated in their decision:

> There is no indication in the tenancy agreement that the "no pets" term is a material term. Nor, did the landlord make any arguments that the "no pets" term is a material term in his submissions to me. The landlord provided a copy of one breach letter concerning the cat as evidence even though he indicated there had been two in the Details of Cause. The breach letter before me is dated December 26, 2019 I note the landlord referred to the tenant as being in breach of her tenancy agreement but he did not indicate she was in breach of a material term. I also heard from the landlord that he had seen a cat in the rental unit in 2016, 2019 and 2020 yet he did not move to end the tenancy until much more recently, after the tenant complained of mould in the rental unit. Given all of these considerations, **I find the landlord did not sufficiently demonstrate that the "no pets" term is a material term of the tenancy agreement. Accordingly, I am unsatisfied the landlord was in apposition [sic] to end the tenancy for breach of a material term of the tenancy agreement.**
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> In light of the above, I grant the tenant's request that I **cancel the 1 Month Notice** dated June 24, 2020. The landlord's application for an Oder of Possession is dismissed.
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> **Despite finding the landlord did not establish the "no pets" clause was a material term of the tenancy agreement,** I am satisfied that the "no pets" clause is a term and the tenant remains obligated to comply with that term by not permitting or allowing animals to stay or occupy the rental unit. Accordingly, pursuant to the authority afforded me under section 62 of the Act, **I order the**

> **tenant to cease permitting the cat in the rental unit.** The tenant stated she only cares for the cat on occasion for her daughter and it is unclear whether the cat is currently occupying the rental unit. If so, I order the tenant to have the cat removed by October 31, 2020.
>
> **Should the landlord find the cat in the premises again after October 31, 2020, the landlord may pursue ending the tenancy under section 47(1)(l) of the Act by issuing another 1 Month Notice to End Tenancy stating the following reason for ending the tenancy:**
>
> - **Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.**
>
> (emphasis added)

The Landlord failed to prove the “no pets” term is a material term in File Numbers 2 and 3. The Landlord was not permitted to re-issue a notice to end tenancy for breach of a material term based on the “no pets” term.

In the prior RTB decision, the Landlord was specifically told that a further notice to end tenancy could be issued pursuant to section 47(1)(l) of the *Act* which states:

> 47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> (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.

However, the Landlord did not issue the Notice pursuant to section 47(1)(l) of the *Act*. The Landlord again issued the Notice pursuant to section 47(1)(h) of the *Act*, which was not permitted given the prior RTB decision.

Given the above, I decline to uphold the Notice on either ground listed as I find the Landlord failed to prove the Tenant significantly interfered with or unreasonably

disturbed another occupant or the Landlord or seriously jeopardized the health or safety or lawful right of another occupant or the Landlord and was not permitted to issue the Notice for breach of a material term based on the “no pets” term.

Given the above, I am not satisfied the Landlord had grounds to issue the Notice and I cancel the Notice. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

I am not satisfied the Landlord had grounds to issue the Notice and I cancel the Notice. The tenancy will continue 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: March 09, 2021

Residential Tenancy Branch