



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, RR, FFT

Introduction

The Tenant seeks an order cancelling a One Month Notice to End Tenancy for Cause or End of Employment (the “Notice”) pursuant to section 47(4) of the *Residential Tenancy Act* (the “Act”). They are also seeking to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to section 65 of the Act and to recover the cost of the filing fee pursuant to section 72 of the Act.

Both the Landlord and the Tenant attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Tenant testified they served the Notice of Dispute Resolution Package (the “Materials”) on the Landlord on December 2, 2022 via email. The Landlord confirmed receipt of the Materials and raised no issues with service. Therefore, I find that the Tenant’s Materials were sufficiently served to the Landlord per section 71(2)(c) of the Act.

The Landlord stated they served their evidence to the Tenant on March 25, 2023 via email. The Tenant confirmed receipt of the Landlord’s evidence and confirmed that they had time to review it. Therefore, I find that the Landlord’s evidence was sufficiently served to the Tenant per section 71(2)(c) of the Act.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the Notice?
2. If not, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed that the tenancy started on December 1, 2020. Rent is \$1,979.25 per month due on the first day of the month. A security deposit of \$975.00 and a pet damage deposit of \$975.00 were paid by the Tenant at the start of the tenancy, which the Landlord still holds. The Tenant still occupies the rental unit.

A copy of the written tenancy agreement ("Tenancy Agreement") was submitted into evidence by both parties. The Tenancy Agreement lists the Landlord as a business, O.P.M.L., whereas the Notice and Application list the Landlord as an individual, D.E. Parties agreed that D.E. became the owner of the rental unit in May 2022. A second Tenant is listed on the Tenancy Agreement whereas the Notice lists only I.W. Parties agreed that the Tenant, I.W., is now the sole occupant of the rental unit.

The Landlord testified that on November 7, 2022 there was a plumbing issue which caused a flood at the building where the rental unit is located. The rental unit was one of the suites affected by the flood. The Landlord stated they sent the Tenant a request to provide copies of their tenant's insurance documents on November 10, 2022.

The Tenant had emailed the Landlord asking for compensation due to inconvenience and stating that they could not provide copies of their insurance documentation. It transpired the Tenant did not have tenant's insurance. Copies of the correspondence were entered into evidence by both parties.

The Landlord stated they believe that by not having tenant's insurance the Tenant has breached of a material term in the Tenancy Agreement. The Landlord stated, however, that copies of a newly instated tenant's insurance policy were provided by the Tenant

“shortly after” the written request. A copy of the insurance policy, effective November 22, 2022 was entered into evidence by the Tenant.

The Landlord served the Notice on November 21, 2022. A copy of the Notice was entered into evidence by the Landlord. The Notice is signed November 21, 2023 and provides an effective date of December 31, 2022. The sole reason listed on the Notice is a “Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so”. The redacted details provided on the Notice are reproduced below:

Details of the Event(s):

On November 6th, one of the booster pumps for the upper floors failed and caused numerous pinhole leaks on the hot water piping and affected several suites at [REDACTED] BC, including [REDACTED] which is a furnished rental. All the flooring, baseboards and some drywall need to be replaced. During this time, the tenant will pack up her personal belongings and vacate the suite so [REDACTED] can complete the repairs. [REDACTED] has asked that I reduce her rent while the suite is uninhabitable or pay for alternate accommodations. As per the rental agreement, [REDACTED] was to obtain and provide a copy of her own Tenant's insurance and has failed to do so. [REDACTED] says: "My concerns lie with the state of the apartment and the continued disruption and inconvenience caused by the necessary repairs to the flooring and drywall along with coordinating visits between [REDACTED] and yourself. My sense of security has been affected by the invasiveness of this incident." Unfortunately, further disruptions are inevitable. The restoration of the suite will require the removal of the furniture and flooring for 2 weeks or longer, making the unit uninhabitable. I do not want to be, in any way, financially or otherwise liable for any damage to her personal belongings or any inconvenience and disruptions to her work, personal life, or well-being. There is a possibility that more pinhole leaks are discovered and I cannot get the suite back in a livable condition in a specified period of time. I cannot personally insure or guarantee when the suite will be returned to its original condition. I would like [REDACTED] to vacate the suite by December 31 2022 by 1 pm so I may continue with the restoration without worrying about upending her life and being held legally or financially responsible for any unknown eventualities that may negatively affect my tenant now or in the future.

The Landlord stated that emergency repairs had been completed but that there has been no painting or repairs covered by strata insurance completed yet. This was because the Tenant wishes to be present when repairs are carried out and their schedule does not line up with that of the contractors. Flooring in the unit needs to be levelled which will take three days to complete.

The Tenant testified that they had never denied entry to the rental unit following 24 hour notice of entry provided by the Landlord and stated that the drywall, painting and damage covered by the strata insurance had all been repaired.

The Tenant stated that they provided their tenant's insurance policy details within a reasonable amount of time of getting the written request and confirmed that no requests had been made for insurance documents from the previous landlord or D.E. before November 10, 2022. They stated they do not believe that the term in the Tenancy Agreement regarding tenant's insurance was a material one.

The Tenant confirmed they had only requested if any compensation would be made available to them as they had been asked to vacate the rental unit while repairs took place and no timeframe given as to when they could return. They had been asked to pay full rent during this period.

The Tenant confirmed none of their property was damaged, lost or stolen during the flood. Additionally, there was no issues with sourcing alternative accommodation so the Landlord would not have to compensate them. They had been told by contractors that the remaining work required can all be without them having to vacate the rental unit.

As The Tenant had ultimately not been required to vacate the rental unit they wished to withdraw their request to reduce rent for repairs, services or facilities agreed upon but not provided. As a result, I amend the Tenant's application to withdraw this claim under my authority pursuant to section 64(3)(c).

Analysis

Rule 6.6 of the *Rules of Procedure* states that when a tenant applies to cancel a Notice to End Tenancy, the landlord must prove the reason they wish to end the tenancy.

There is one reason provided on the Notice which is echoed in section 47(1)(h) of the Act which provides that the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

A material term is one so important that the most trivial breach of that term gives the other party the right to end the agreement, as confirmed in *Policy Guideline 8 - Unconscionable and Material Terms*. The Guideline also confirms that it is for the person relying on the term to present evidence and arguments supporting the proposition that the term is a material term. Simply referring to a term as a material term does not make it one.

The term in the Tenancy Agreement which refers to tenant's insurance is reproduced below:

6. The Tenant must have their own Tenant's insurance and must provide a copy of their insurance policy before occupancy of the unit. The Landlord takes no responsibility for any lost, stolen, or damaged items.

This term was also referenced in correspondence from the Landlord to the Tenant submitted into evidence.

I accept the Tenant's undisputed testimony that since the start of the tenancy on December 1, 2020, the first instance of any mention of insurance came on November 10, 2022 which is approaching two years since the Tenant took occupancy of the rental unit. I note the Landlord took ownership of the rental unit in May 2022 which provided them ample time to make inquiries regarding the Tenant's insurance documents. In light of this, I find that the term is not a material term.

Furthermore, *Policy Guideline 8 - Unconscionable and Material Terms* provides that 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.

Based on the testimony of both parties and the correspondence submitted into evidence, I find that the first request for insurance information provided to the Tenant from the Landlord was an email on November 10, 2022. The email asks for insurance information at the Tenant's earliest convenience. There is no reference to having insurance being a material term.

A follow-up email, also on November 10, 2022, request the Tenant's insurance information the their earliest convenience, or by November 14, 2022. Again, there is no reference to having insurance being a material term.

A further letter from the Landlord to the Tenant dated November 14, 2022 refers to term number 6 in the Tenancy Agreement and requests the insurance by 9 A.M. on November 18, 2022. There is no reference to the term being a material term.

Accordingly, the Tenant's Application is granted and the Notice to End Tenancy for Cause dated November 21, 2022 canceled and is of no force or effect and the tenancy continues.

As the Tenant has been successful in their Application I find they are entitled to the reimbursement of the filing fee. I order that the Tenant may make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the return of the filing fee.

Conclusion

The Tenant's Application is granted.

The Notice is canceled and the 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 Act.

Dated: April 05, 2023

Residential Tenancy Branch