



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

OPC

Introduction

This hearing dealt with an application submitted by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated July 29, 2011 and purporting to be effective September 1, 2011. Both parties appeared and gave testimony.

Issue(s) to be Decided

The issue to be determined on the landlord's application, based on the testimony and the evidence is whether the landlord is entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause. The burden of proof is on the landlord to justify the Notice to End Tenancy.

Background and Evidence Notice to End Tenancy

The landlord testified that the tenancy had originally started in June 2011 with rent of \$950.00, at which time the tenant paid a security deposit of \$475.00. The landlord testified that the tenant's actions caused a flood which had damaged the property and a One-Month Notice to End Tenancy for Cause was issued for that reason.

The landlord testified that there was a subsequent agreement made between the parties that the tenant's rent for August would be waived and that the tenant would leave peacefully on September 1, 2011 pursuant to the Notice. The landlord is seeking an order of possession based on the July 29th, 2011 Notice.

The tenant testified she received the One-Month Notice to End Tenancy for Cause and agreed with the landlord's offer to waive rent for August 2011 provided that the tenant vacate on September 1, 2011. However, according to the tenant, it was later found that the damage from the flood was not the tenant's fault and during a conversation with the landlord, they agreed to reinstate the tenancy. The tenant testified that rent for September was paid on the premise that the tenant would be staying.

The landlord denied that the tenancy was reinstated, but acknowledged that he did not issue any receipt that had stated rent was only being accepted “*for use and occupancy only*”, in order to ensure it was made clear to the tenant that the tenancy would not be continuing, despite payment of rent for the month of September. The landlord testified that he felt he was entitled to receive rent owed while awaiting the outcome of the dispute resolution hearing.

The landlord also was concerned about the fact that the tenant had already received an abatement of rent for August 2011, in anticipation of the tenancy ending on September 1, 2011, and therefore the tenant was currently in arrears for the rent that was owed for August.

Analysis

Under section 47 of the Act, a landlord may end a tenancy by giving notice to end the tenancy if the tenant has caused extraordinary damage to the rental unit and in this instance the landlord issued a One-Month Notice to End Tenancy for Cause dated July 29, 2011.

The Act states that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. However, if a tenant who has received a notice under section 47 does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

In this instance, the tenant would have had to file an application to dispute the Notice by August 8, 2011.

However, I find that the parties did have some conversations about when and under what terms, the tenancy would end and I also find that the landlord accepted rent from the tenant on September 1, 2011 and this occurred *after* the first One Month Notice to End Tenancy for Cause was served and beyond the effective date of the Notice. I find that the landlord did not issue a receipt specifically stating that the September payment was being accepted “*for use and occupancy only*” and that the tenancy was not being reinstated despite the payment. I find that, while the landlord may not have intended on reinstating the tenancy, the tenant, may have presumed that the landlord’s acceptance of his payment functioned to erase the Notice.

Section 11 in the Residential Tenancy Guidelines provides that if a landlord accepts payment of rent for the period after the effective date of the Notice, then the intention of the parties will be in issue. According to the guidelines, intent can be established by evidence when:

- the receipt shows the money was received for use and occupation only.
- the landlord specifically informed the tenant that the money would be for use and occupation only, and
- the conduct of the parties indicates the intention.

Given the above, I find that this tenancy was reinstated after the Notice dated July 29, 2011 and therefore the One Month Notice to End Tenancy for Cause must be cancelled.

The landlord is at liberty to pursue any rental arrears still owed for the month of august 2011.

Conclusion

I order that the One-Month Notice to End Tenancy for Cause dated July 29, 2011 is hereby cancelled and of no cause nor effect..

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: September 22, 2011.

Residential Tenancy Branch