



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, CNC

Introduction

This hearing dealt with an application by the tenant for more time to make an application, to cancel a notice to end tenancy for unpaid rent and to cancel a notice to end tenancy for cause.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

This tenancy began December 18, 2010. This property is a motel which rent rooms both as short stay/vacations rentals and long term tenancy rentals.

On April 14, 2012 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

On May 18, 2012 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

On May 22, 2012 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause.

The tenant has:

- been repeatedly late paying rent.
- significantly interfered with or unreasonably disturbed another occupant or the landlord.
- put the landlord's property at significant risk.

The tenant testified that she had not filed to dispute the April 14, 2012 notice as the landlord had given her notices in the past but never acted on them and she thought this time would be no different.

The landlord testified that there had been notices for unpaid rent served on the tenant in the past and that this time they were seeking enforcement of the notices. The landlord stated that the tenant has paid the rent in full since the April 14 and May 18, 2012 notices for unpaid rent were served on the tenant. The landlord stated that they did not however provide the tenant with a receipt stating *'for use and occupancy only, does not reinstate tenancy'*.

The landlord stated that they are seeking enforcement of the notice to end tenancy for cause as the tenant is repeatedly late in paying their rent and that the tenant has repeatedly disturbed the peace and quiet enjoyment of other tenants because of loud parties and fighting. The landlord stated that they have had numerous complaints about the tenant's behaviour in this regard and that they police have been called to attend on a number of occasions. The landlord acknowledged that they have never given the tenant a written warning notice to correct any disruptive behaviour in order for the tenant to correct that behaviour.

The tenant stated that there were lots of people that partied in the building on a regular basis and she did not understand why she was being singled out by the landlord.

The tenant maintained that she paid her rent on time and she did not understand why the landlord was always telling her that her rent was late as she pays it on the 1st of each month. The tenant stated that lots of other tenants were on welfare, they all got paid on 'welfare Wednesday' yet the other tenants were never told that their rent was late.

The landlord stated that the tenant had taken possession of the room December 18, 2010 and that rent was due on the 14th of each month. The landlord stated that there is no tenancy agreement in place that specifies when rent is due. The tenant repeatedly reiterated that fact that she did not understand why her rent was considered to be late when paid on the first and did not acknowledge that she had any understanding that rent was due on the 14th as the landlord stated.

The landlord also acknowledged that as a regular course of business tenants are charged a 'guest fee' when they have guests staying with them and that this tenant has been charged guest fees. The landlord stated that the tenant also had someone staying with her in her room and that the tenant is being charged a *single occupancy* and not a *double occupancy* rate. The landlord stated that in future they would just charge a *daily rate* thus avoiding any problems with double occupancy and guest fees.

Analysis

Based on the documentary evidence and testimony I find that the tenant was properly served with notices to end tenancy for non-payment of rent however as the landlord took receipt of rent monies from the tenant after issuance of the notice and did not provide the tenant with a receipt stating *'for use and occupancy only, does not reinstate tenancy'*, (Residential Tenancy Fact Sheet RTB-124, Re-Instatement of Tenancies) the landlord has effectively re-instated the tenancy and must serve the tenant a new 10 day notice to end tenancy for non-payment of rent.

Based on the documentary evidence and testimony of the parties I find that there is insufficient evidence to uphold the Notice to End Tenancy for Cause. The landlord bears the burden of proving on the balance of probabilities that he has cause to end the tenancy and in this case has not done so.

The landlord states that the tenant is repeatedly late when paying the rent however the evidence that has been submitted by the landlord to establish the repeated late rent payments is as best, incomplete and confusing to interpret. There is also the matter of no written tenancy agreement that states when rent is due and the tenant's obvious confusion as to when rent is due as the tenant believes rent is due on the 1st while the landlord maintains the 14th yet the tenancy started on the 18th.

It should also be noted that the landlord has been charging the tenant a 'guest fee' and this is in direct violation of the Residential Tenancy Regulations which state very clearly that a landlord may not charge such a fee. Therefore the landlord will be required to go back through their accounts for this tenancy, provide copies of all payment to the tenant for their records and **credit the tenant any and all guest fees that have been charged since the start of this tenancy.**

As the date rent is due remains unresolved, it is hoped that the guest fees due back to when applied to the tenant's rent, the tenant will cover the period from the 18th to the end of the month and then the landlord and tenant can enter into a written agreement that clearly establishes the rent as being due on the 1st of each month.

Residential Tenancy Regulation section **5 Prohibited fees**

(1) A landlord must not charge a guest fee, whether or not the guest stays overnight.

I also find insufficient evidence to prove that the tenant placed the landlord's property at significant risk, unreasonably disturbed or seriously jeopardized another occupant or the landlord. The landlord stated that the tenant has created disturbances that have affected the peace and quiet enjoyment of other tenants however the landlord has not provided the tenant with any written notices to correct the behaviour or risk possible eviction. The landlord has also not provided dates and times of these disturbances to establish that this is an on-going problem.

In regards to the landlord's comments that 'we'll just charge a daily rate' and that the landlord believes this will effectively remove them from falling under the Residential

Tenancy Act, the landlord needs to understand that unless the rooms are being rented as *vacation or travel accommodation*, written tenancy agreement or not, these tenancies will fall under this Act and all rights and obligations for landlords and tenants apply.

It would behoove the landlord to either contact this office for information or go to the Residential Tenancy website to learn and understand the legislation. The landlord must also recognize that even though there are no written tenancy agreements in place, the Act still applies to these long term rentals that are clearly tenancies and not vacation rentals.

Residential Tenancy **Policy Guideline 27 Jurisdiction** speaks to:

b. Hotel Tenants

Occupancy of a hotel is a license and if occupied pursuant to a tenancy agreement, the Residential Tenancy Act assumes jurisdiction and confers power upon the RTB over certain hotels and hotel tenants. The RTB will therefore hear the dispute if the tenant is a hotel tenant under a tenancy agreement.

2. VACATION ACCOMMODATION

The Residential Tenancy Act² provides that the Act does not apply to vacation or travel accommodation. However; the Act would apply to summer cottages and winter chalets that are rented other than on a vacation or travel basis. For example, a winter chalet rented for a fixed term of one year is not rented on a vacation basis.

Residential Tenancy Act section **4 What this Act does not apply to**

This Act does not apply to:

(e) living accommodation occupied as vacation or travel accommodation

Residential Tenancy Act section **5 This Act cannot be avoided**

(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

The landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated April 14, 2012 is hereby set aside with the result that the tenancy continues uninterrupted.

The landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated May 18, 2012 is hereby set aside with the result that the tenancy continues uninterrupted.

The landlord's 1 Month Notice to End Tenancy for Cause dated May 22, 2012 is hereby set aside with the result that the tenancy continues uninterrupted.

The tenant understands that while the landlord has not been successful in obtaining an order of possession in this hearing, that if the tenant's behaviour creates problems on

the property in the future, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer for consideration.

Accordingly, ALL notices to end tenancy are hereby set aside and the tenancy continues in full force and effect.

Conclusion

ALL notices to end tenancy are hereby set aside and the tenancy continues in full force and effect.

The landlord is hereby Ordered to provide copies of all payment to the tenant for their records and credit the tenant any and all guest fees that have been charged since the start of this tenancy.

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: June 7, 2012

Residential Tenancy Branch