



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LAT, OLC, PSF, RP, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy; an order to have the landlord make repairs to the rental unit; provide services or facilities required by law; and allow the tenants to change locks to the rental unit.

The hearing was conducted via teleconference and was attended by both tenants and the landlord.

In his written submission the landlord submitted that *Residential Tenancy Act (Act)* did not apply to this tenancy and as such this proceeding did not hold jurisdiction over the matters raised. The landlord cited Section 4(c) which states: "This Act does not apply to...(c) living accommodations in which the tenant shares bathroom or kitchen facilities with the owner of the accommodation."

In the hearing the landlord clarified he is not the owner of the rental unit. As such, I find that Section 4(c) does not apply to this tenancy and I accept jurisdictions on the matters submitted in the tenants' Application.

During the hearing, the landlord did not verbally request an order of possession should the tenants be unsuccessful in their Application.

The tenants testified that they no longer require an order to have the landlord change the locks to their unit. As such, I amend their Application to exclude this matter.

During the hearing the matter of the time limit for filing an Application to dispute a 1 Month Notice to End Tenancy within 10 days of receiving it became relevant to the proceedings. I advised both parties that although I was likely to find the tenants did not apply within the required timelines to cancel the Notice however, I did agree to reserve my decision on this matter to hear the tenant's Application in full.

The tenants testified that they had submitted an Application for Dispute Resolution to dispute the Notice and a hearing was held on July 23, 2012. The tenants testified that in that hearing and in the absence of the landlord the Dispute Resolution Officer (DRO) was not satisfied that the tenants had served the landlord sufficiently with notice of that hearing.

The tenants went on to say the DRO allowed them to withdraw their Application and that they could submit a new Application for Dispute Resolution. The decision itself, dated July 23, 2012, states: "At the outset of the hearing the Tenant advised he was unable to proceed today and asked that the matter be withdrawn, accordingly I dismiss the Tenant's application with leave to reapply. Leave to reapply is not an extension of any applicable limitation period."

The tenants testified that they understood from that hearing that their withdrawal would not impact their ability to apply to dispute the Notice and they then filed their second Application on July 23, 2012 – the same day as that hearing and the decision.

The tenants did not, in their Application for Dispute Resolution for this hearing, apply for an extension of time to make an application to cancel a notice to end tenancy as is provided on the Application. While I had access to a copy of the decision issued on July 23, 2012, the tenants did not serve any evidence to an Application for more time to dispute a notice to end tenancy to either the landlord or the Residential Tenancy Branch.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause; an order to have the landlord make repairs and to provide services or facilities required by law and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 47, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began as a month to month tenancy with the male tenant in June 2011 and the female tenant moved in to the unit in September 2011 for a current rent of \$885.00 due on the last day of each month, with a security deposit of \$325.00 paid.

The parties agree the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause on June 29, 2012 with an effective date of July 31, 2012 citing the tenants have allowed an unreasonable number of occupants on the property; the tenants or a person permitted on the property by the tenants has significantly interfered with or unreasonably disturbed another occupant or the landlord; and the tenants have engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

Analysis

Section 47(1) of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) There are an unreasonable number of occupants in a rental unit;
- b) 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,
- c) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

Section 47(4) states that should a tenant receive a notice to end tenancy under Section 47 they may dispute the notice by making an application for dispute resolution with 10 days after the date the tenant receives the notice.

Section 47 (5) states that if a tenant does not apply to dispute the notice in accordance with Section 47(4) they are conclusively presumed to have accepted that the tenancy ends on the effective date and must vacate the rental unit.

Section 66 allows me to grant an extension of a time limit established by the *Act* only in exceptional circumstances. Despite the tenants' testimony that they were advised that withdrawing their original Application would have no effect on their ability to cancel the notice I find the tenants did not provide, in this Application for Dispute Resolution, an indication of their intention to seek more time to apply to cancel the Notice or evidence to support any exceptional circumstances.

While the decision of July 23, 2012 grants leave for the tenants to reapply it also confirms that this leave to reapply is not an extension of any applicable time limit such

as the time limit for applying to dispute a 1 Month Notice to End Tenancy for Cause as allowed under Section 47. I also note the decision does not provide any reasons for the withdrawal other than the tenant was unable to proceed.

As a result, I find the tenants have failed to provide sufficient evidence of any exceptional circumstances that would warrant an extension of time to apply to cancel a 1 Month Notice to End Tenancy for Cause.

Conclusion

For these reasons, I find the tenants failed to apply to dispute the notice to end tenancy within 10 days and in accordance with Section 47(5) are conclusively presumed to have accepted the end of the tenancy. I dismiss this portion of the tenants' Application.

As I have found the tenancy has ended I find no reason to decide on any other portions of the tenants' Application and I dismiss all other issues.

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: August 20, 2012.

Residential Tenancy Branch