



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MT, MNDC, OPT, LAT, RR, O

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; for more time to apply to set aside a Notice to End Tenancy; for a monetary Order for money owed or compensation for damage or loss; for authorization to change the locks on the rental unit; for authorization to reduce the rent; and for "other". As the Tenant currently has possession of the rental unit, I find there is no need to consider her application for an Order of Possession.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Tenant submitted two Notices to End Tenancy and a hand written document, dated March 21, 2013, to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant stated that she submitted additional documents to the Residential Tenancy Branch on April 02, 2013 however I did not have those documents before me at the time of the hearing. As those documents were not submitted in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure, they were not accepted as evidence for those proceedings.

Preliminary Matter

Section 59(2)(b) of the *Residential Tenancy Act (Act)* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. I find that the Tenant's Application for Dispute Resolution does not provide full details of the Tenant claim for financial compensation. In reaching this conclusion I was heavily influenced by the fact the Tenant claimed compensation of \$6,180.00 but has not provided full details of the monetary claim. Specifically, she has not clearly outlined how much she is claiming for moving costs,

how much she is claiming for cleaning costs, and how much she is claiming for compensation for the loss of the quiet enjoyment of her rental unit.

Given the lack of details, I find that it would be prejudicial to the Landlord to consider her claim for financial compensation at these proceedings. I therefore dismiss the Tenant's claim for a monetary Order for money owed or compensation for damage or loss and for authorization to reduce the rent, with leave to reapply on those specific issues.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause be set aside; should the Tenant be granted more time to apply to set aside a Notice to End Tenancy; and should the Tenant be granted the right to change the locks on the rental unit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on January 30, 2013 and that rent is due by the first day of each month.

The Landlord and the Tenant agree that on March 01, 2013 the Landlord personally served the Tenant with a One Month Notice to End Tenancy for Cause, which declared that the Tenant must vacate the rental unit by March 01, 2013. The cited reason for ending the tenancy was that the tenant had breached a material term of the tenancy agreement that was not corrected within a reasonable time after she received written notice to do so.

The Landlord stated that on March 20, 2013 he posted a second One Month Notice to End Tenancy for Cause on the Tenant's door, which declared that the Tenant must vacate the rental unit by April 30, 2013. The cited reason for ending the tenancy was that the tenant had breached a material term of the tenancy agreement that was not corrected within a reasonable time after she received written notice to do so. The Tenant stated that she located this second notice under her front door on March 19, 2013.

The Tenant stated that on March 12, 2013 she filed an Application for Dispute Resolution in which she disputed the Notice to End Tenancy. She stated that she did not dispute the Notice earlier than March 12, 2013, in part, because she did not breach a material term of the tenancy agreement and, in part, because she did not fully read the Notice and she did not understand that she was required to dispute the Notice within ten days of receiving it.

The Landlord stated that he wishes to end the tenancy because the Tenant is smoking on the residential property, which he considers to be a breach of a material term of the tenancy agreement. The Landlord acknowledged that he did not inform the Tenant that she was not allowed to smoke on the residential property prior to the start of the tenancy. The Tenant argues that smoking on the property is not a breach of a material

term of the tenancy agreement.

The Tenant bases her application to change the locks on her belief that the Landlord is entering her rental unit without lawful authority. She stated that on February 02, 2013 she found her front door unlocked, although she is certain that she locked it prior to going to bed the following evening. She speculates that the Landlord or his wife unlocked the door, as they are the only other people that are known to have keys. The Landlord and his wife deny this allegation.

The Tenant stated that on February 03, 2013 she placed a note on her fridge that read: "Smile, you're on camera". She stated that when she subsequently spoke with the Landlord's wife she asked the Tenant where her camera is. The Tenant speculated that this was a reference to the note on her fridge. The Landlord's wife stated that she did not see this note on the Tenant's fridge. She stated that she did ask the Tenant about her camera, but only because the Tenant had previously photographed her smoking on the residential property.

The Tenant stated that on February 26, 2013 she noted that a card she had on top of her fridge had been moved. She speculates the Landlord or his wife read the card while they were in her unit, as they are the only other people that are known to have keys. The Landlord and his wife deny this allegation. The Landlord and his wife deny entering the unit without lawful authority at any point during this tenancy.

Analysis

On the basis of the undisputed evidence, I find that on March 01, 2013 the Tenant received a One Month Notice to End Tenancy for Cause, which declared that the Tenant must vacate the rental unit by March 01, 2013.

Section 47(2) of the *Act* stipulates that a One Month Notice to End Tenancy for Cause must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As the rent is due by the first of each month, the earliest effective date of this Notice to End Tenancy is April 30, 2013.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy which the Tenant received on March 01, 2013 is April 30, 2013.

Section 66(1) of the *Act* authorizes me to extend the time limit for setting aside a Notice to End Tenancy only in exceptional circumstances. The word "exceptional" means that I am unable to extend this time limit for ordinary reasons. The word "exceptional" implies that the reason for failing to meet the legislated time lines is very strong and compelling. A typical example of an exceptional reason for not complying with the timelines

established by legislation would be that the Tenant was hospitalized for an extended period after receiving the Notice. In the circumstances before me, I do not find that the Tenant's failure to fully read the Notice to End Tenancy; the Tenant's failure to understand that she only had ten days to dispute the Notice to End Tenancy; and her belief that she did not breach a material term of the tenancy agreement are strong and compelling reasons for being unable to dispute the Notice to End Tenancy within ten days of receiving the Notice. On this basis, I dismiss the Tenant's application for more time to apply to set aside the Notice to End Tenancy.

Section 47(5) of the *Act* stipulates that a tenant is conclusively presumed to have accepted that a tenancy ends on the effective date of a notice received pursuant to section 47 of the *Act* and that the tenant must vacate the rental unit by that date unless the tenant disputes the notice within ten days of receiving it. As the Tenant did not dispute the Notice to End Tenancy she received on March 01, 2013 within ten days of receiving it and I have dismissed her application for more time to apply to set aside a Notice to End Tenancy, I find that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice to End Tenancy. I therefore dismiss her application to set aside the Notice to End Tenancy.

A conclusive presumption is one in which the proof of certain facts makes the existence of the assumed fact beyond dispute. The presumption cannot be rebutted or contradicted by evidence to the contrary. It is important to note that the conclusive presumption set out in section 47(5) of the *Act* is not that the Landlord has lawful grounds to end the tenancy. Rather, it is a conclusive presumption that the Tenant has accepted that the tenancy is ending on the effective date of the Notice.

On the basis of this conclusive presumption, I am unable to set aside the Notice to End Tenancy the Tenant received on March 01, 2013. I could not set aside the Notice to End Tenancy even if I agreed that the Tenant had not breached a material term of the tenancy agreement. I have not, therefore, determined whether the Tenant breached a material term of the tenancy agreement, as that is not relevant to my decision in this matter.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord has entered the rental unit without lawful authority. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's suspicion that the rental unit has been entered or that refutes the Landlord's testimony that the rental unit has not been entered without lawful authority. I find that the Tenant's suspicions are largely speculation and that there are alternate explanations for her observations, including that she simply forgot to lock her door or that she inadvertently moved the card on her fridge. I therefore dismiss her application for authorization to change the locks.

Conclusion

The Notice to End Tenancy remains in full force and effect. The Landlord did not request an Order of Possession, although he was given ample opportunity to do so.

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: April 03, 2013

Residential Tenancy Branch