



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Westsea Construction Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Cause and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on May 1, 2012, rent is due on the 1st day of each month.

The tenant did not dispute that on April 29, 2013 he received a 1 month Notice to End Tenancy for Cause, issued on that date. The Notice gave 2 reasons for the tenancy ending: the tenant had put the landlord's property at significant risk and had jeopardized a lawful right or interest of another occupant or the landlord.

The Notice had an effective date of May 31, 2013.

The landlord accepted rent for June, 2013; a receipt was issued, it did not indicate that rent had been accepted for use and occupancy only. The landlord said this was done in error and that the receipt should have indicated rent was accepted for use and occupancy only. No communication occurred with the tenant in relation to the status of the tenancy or the Notice ending tenancy.

The tenant said he did not fully understand the significance of the rent payment and that had expected to obtain clarification during the hearing.

The landlord stated that they accepted rent as the tenant is occupying the unit and that they could not obtain an Order of possession until this hearing was held, beyond the date rent was due for June 2013 and the effective date of the Notice.

Analysis

Based on the testimony of the parties I find that on April 29, 2013 the tenant received the 1 Month Notice to End Tenancy. Therefore, I find that the Notice was effective on May 31, 2013.

The tenant did not dispute the Notice and paid rent in order to occupy the unit for the month of June 2013; beyond the effective date of the Notice.

Residential Tenancy policy references the payment of rent after the effective date of a Notice. A Notice to End Tenancy can be withdrawn, allowing the tenancy to continue, only by the express or implied consent of both parties. The question of waiver is critical when the landlord accepts rent payment for the period of time following the effective date of a Notice.

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- Whether the receipt issued indicated the rent was accepted for use and occupancy only'
- Whether the landlord specifically informed the tenant rent was accepted for use and occupancy only; and
- The conduct of the parties.

In order to be effective, a notice ending a tenancy must be clear, unambiguous and unconditional.

I have considered the fact that a receipt was issued for payment of June 2013 rent and that the receipt did not indicate rent was accepted for use and occupancy only. The parties also confirmed that the tenant was not specifically informed that rent had been accepted for use and occupancy only.

I have also considered the conduct of the parties and the tenant's submission that he waited for this hearing to see what would happen. There was no evidence before me that once rent was accepted for June 2013 that the landlord had any communication with the tenant in relation to their intention and, as a result the tenant attended the hearing in order to find out the conclusion of the process.

I find the tenant was not informed that payment of rent was accepted for use and occupancy only; the tenant understood that if he lived in the unit he must pay rent. The tenant did not appear to understand whether payment meant he had still had to vacate or if he could remain in the unit. I find that the conduct of the tenant demonstrated a lack of comprehension of the significance of the rent payment made for a period beyond the effective date of the Notice.

I have also considered the conduct of the landlord. Payment of June 2013 rent was accepted and at that time, and leading up to the date of the hearing, no information was given to the tenant in relation to the end of the tenancy. When considered against

policy, which I find provides a reasonable stance, I find that the conduct of the landlord was somewhat vague. While the landlord proceeded with the hearing I am not convinced that the tenant understood whether the Notice ending tenancy had been waived or not.

Taking into account policy, I would expect the landlord to have clearly indicated that rent payment had been accepted for use and occupancy only and, on the balance of probabilities, I find that the failure to issue a receipt for use and occupancy only and the failure to communicate the landlord's continued intention to evict the tenant resulted in a waiver of the Notice ending tenancy. Even though the hearing proceeded, I find that the tenant was not sufficiently informed of the landlord's intentions.

Therefore, I find that by accepting the June 2013 rent payment, in the absence of any communication the tenancy would end, that the implication was made that the Notice ending tenancy issued on April 29, 2013 was waived. Therefore, I find that the Notice is of no force and effect and that the tenancy will continue until it is ended in accordance with the Act.

The landlord's application is dismissed.

Conclusion

The 1 Month Notice to End Tenancy for Cause issued on April 29, 2013 is of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 25, 2013

Residential Tenancy Branch

