



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HELPING SPIRIT LODGE SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPC, MNR, MNDC, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause. The landlord applied for an Order of Possession for cause and a Monetary Order for unpaid and/or loss of rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The landlord requested that the monetary claim for unpaid and/or loss of rent be withdrawn with liberty to reapply. The landlord's request was granted.

I heard that the tenant and her Advocate had not had an opportunity to provide supporting documentation as the landlord's evidence was received only recently since the tenant had been out of town in the weeks preceding this hearing. The tenant and her Advocate confirmed that they were prepared to respond to the landlord's evidence. I accepted the landlord's evidence submission and informed the parties that I would proceed with the hearing but that I would consider allowing submissions of evidence from the tenant at a later time if I were satisfied such evidence was critical to making a decision in this matter. At the end of the hearing, I was satisfied that it was unnecessary to request or authorize the tenant to provide supporting documentation.

Upon review of the tenancy agreement, I noted that the tenancy was on a fixed term basis that expired on October 31, 2013. As the tenant was seeking to have a Notice to End Tenancy cancelled and the tenancy continue, I found it necessary and appropriate to consider whether the tenancy was already at an end.

Issue(s) to be Decided

Has the tenancy ended pursuant to the expiration of the fixed term and, if not, has the landlord established that the tenancy should end for cause?

Background and Evidence

The tenant began residing in the rental unit on December 26, 2012. I heard the landlord is a society that provides living accommodation to vulnerable individuals at the residential property and rent is subsidized. Since December 2012 the landlord and tenant executed three fixed term tenancy agreements with the most recent starting on August 1, 2013 and expiring on October 31, 2013. Clause 15 of the tenancy agreement provides for "Ending the Tenancy".

During the hearing, the landlord pointed to paragraphs (c) and (f) of clause 15, in particular. Below, I have reproduced the subject paragraphs:

(c) Conduct

The tenant agrees that if any occupant or guest causes unreasonable and/or excessive noise or disturbances the landlord may end the tenancy. The tenant has three warning on tenancy; the next warning will result in One Month's Notice to End Tenancy. [Name of tenant] agrees with this term.

(f) The tenant must vacate the residential property by 1 p.m. on the day the tenancy ends, unless the landlord and tenant otherwise agree.

With respect to the use of fixed term tenancy agreements I heard from the landlord that, typically, near the expiration of a fixed term the landlord and tenant met to discuss issues, if any, and enter into a new tenancy agreement that reflect a new fixed term and any other new terms, if any. In entering into the more recent fixed term tenancy agreement, paragraph 15(c) was added and the landlord had the tenant sign a document entitled "Behavioural Agreement" as there had been previous issues with respect to noise and conduct of the tenant and/or her guests while in the rental unit or on the residential property.

Paragraph H. of the Behavioural Agreement is similar to paragraph 15(c) of the tenancy agreement in that it provides that the tenant acknowledges and agrees:

“That I have three warnings against my tenancy with [name of landlord]. The next notice from [name of landlord] will result in a one month’s notice to end tenancy at [address of rental unit].”

On September 23, 2013 the landlord issued a 1 Month Notice to End Tenancy for Cause (the Notice) and posted it on the tenant's door that same day. The Notice has a stated effective date of October 31, 2013 and indicates two reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Both parties were prepared and did provide submissions with respect to the tenant’s conduct, or the conduct of her guests, since moving into the rental unit; complaints the landlord received regarding such conduct, the parties’ respective interpretation of clause 15(c) of the tenancy agreement; and, the issuance of the 1 Month Notice.

With respect to what happens at the end of the fixed term tenancy, as provided under paragraph 15(f) of the tenancy agreement, the tenant’s advocate submitted that the tenancy should not be found to be at an end since:

- The tenant does not understand the implications of a fixed term tenancy;
- The provision for ending the tenancy is located on page 4 of a 6-page tenancy agreement as opposed to the first page where the fixed term start and end dates are provided; and,
- The landlord issued a 1 Month Notice to End Tenancy with an effective date of October 31, 2013 which would be unnecessary if the landlord viewed this tenancy as a fixed term requiring the tenant to vacate the rental unit on October 31, 2013.

The tenant’s Advocate requested and the landlord consented that should it be found the tenancy has ended the tenant be permitted use and occupation of the rental unit until the end of November 2013.

Analysis

Section 13 of the Act provides for the requirements for tenancy agreements; including, the terms agreed upon by the parties. In particular, 13(2)(f)(iii) provides that if the tenancy is for a fixed term the tenancy agreement must provide:

- (A) The date the tenancy ends, and
- (B) Whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenancy must vacate the rental unit on that date.

Section 6 of the Act provides that a term in a tenancy agreement is not enforceable if

- (a) The term is inconsistent with this Act or the regulations;
- (b) The term is unconscionable; or,
- (c) The term is not expressed in a manner that clearly communicates the rights and obligations under it.

Upon review of the tenancy agreement provided as evidence, I find that on July 22, 2013 duly executed a tenancy agreement and entered into a fixed term tenancy as evidence by the specific end date provided in clause 2 of the tenancy agreement. I am also satisfied that the tenancy agreement complies with the requirement for the tenancy agreement to stipulate what is to happen at the end of the fixed term, pursuant to clause 15(f) of the tenancy agreement. I find that clause 15(f) does not conflict with the Act or regulations, is not unconscionable, and is sufficiently clear so as to communicate the rights and obligations under the term.

With respect to the Advocate's submissions that clause 15(f) of the tenancy agreement should not be enforced I find that a party to a tenancy agreement, as with any contract, is responsible for reading and understanding what is it they are signing and agreeing to. Further, the Act requires that the agreed upon terms be included in the tenancy agreement but does not provide for any specific ordering of the terms; thus, the location of the clause 15(f) does not invalidate the clause. Finally, with respect to the issuance of the 1 Month Notice, I accept that it was unnecessary to issue the Notice in order to end the tenancy as of October 31, 2013; however, I find it reasonable that the Notice serves as advance notice to the tenant that the landlord does not intend to consider continuation of the tenancy or entering into a new tenancy agreement with the tenant.

In light of all of the above, I find the tenancy ended as of October 31, 2013 pursuant to the expiration of the fixed term tenancy agreement and that the parties did not mutually agree to continue the tenancy or enter into a new tenancy.

Although I heard the landlord received a portion of a rent payment for November 2013, I am satisfied the tenancy has not been reinstated as the landlord has clearly communicated to the tenant that the landlord seeks to regain possession of the rental unit by way of the 1 Month Notice and the landlord's Application for an Order of Possession.

As I have found the tenancy has ended pursuant to the expiration of the fixed term tenancy agreement, I find it unnecessary to further consider the disputed evidence I heard with respect to the tenant's conduct and ending the tenancy for cause.

Pursuant to the authority afforded me under the Act, I provide the landlord with an Order of Possession effective November 30, 2013.

I make no order with respect to recovery of the filing fee.

Conclusion

The landlord has been provided an Order of Possession effective at 1:00 p.m. on November 30, 2013.

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: November 13, 2013

Residential Tenancy Branch

