



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacifica Housing Advisory Association
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with an application by the landlord for an order of possession based upon a 1 Month Notice to End Tenancy for Cause. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

Is the landlord entitled to an order of possession and, if so, on what terms?

Background and Evidence

This month-to-month tenancy commenced January 15, 2015. The monthly rent of \$435.00 is due on the first day of the month.

The landlord described the tenancy as a supportive housing setting. They target a population that is older, has been homeless, and with addiction and/or mental health issues. There are usually two support staff at the building at all times. These support workers help tenants with basic support and connect tenants to professional services as required.

The tenant is sixty years old. He has a brain injury and other health issues. He has also had issues with drugs. His evidence is that during the time period covered by these events he was coming off crystal meth, clorazepam and trazedone. He says that those drugs are very difficult to de-tox and when he is coming off them he gets agitated.

The landlord's evidence is that the tenant's behaviours started in February and peaked on March 18. The behaviour described in the incident report for that date includes throwing food, dishes, furniture and personal belongings from his balcony; being verbally aggressive with staff; yelling obscenities in the hallway; hitting things with his cane; and spitting on the walls. He was also writing Facebook posts on the landlord's page about how terrible the place is and threatening to complain to community

members. On March 17 several tenants approached the staff expressing concern about the tenant's behaviour. Finally on March 18 the landlord decided to present the tenant with a 1 Month Notice to End Tenancy for Cause. Multiple reasons were checked on the notice.

After the landlord served the tenant with the notice to end tenancy they discussed a behavioural contract with him. The manager explained that this was the first behavioural contract they had entered into with the tenant. They knew the RTB process would take a while and they hoped they could improve the situation and maybe be able to continue the tenancy. The manager testified that she told the tenant that he had a right to dispute the notice with the Residential Tenancy Branch if he wanted to. She told him they were going ahead with the eviction but if he could manage his behaviour the tenancy might be continued.

The contract sets out the behaviours expected from the tenant. It concludes: "If [tenant] fails to abide by this contract, it will result in an incident report and/or other action that will endanger [the tenant's] housing status. . .".

The tenant signed the behavioural contract. He testified that he thought the contract governed the situation and if he behaved himself the tenancy would continue. As a result he did not file an application disputing the notice.

The manager testified that between March 18 and April 16 there were ongoing conversations with the tenant in which the tenant was told that if he could maintain his behaviour they would not proceed with the eviction.

There was an incident on April 16. This involved the tenant pouring his coffee onto the ground in the elevator; throwing his coffee cup onto the street, ramming his scooter into a table in the common area, yelling at staff, and engaging in a dispute with another resident. The report also notes that once the tenant was able to obtain some cigarette money he calmed down considerably. At a tenant meeting that night the tenant publically acknowledged his behaviour, said the rule should be to communicate respectfully, and apologized to the other tenant.

This was followed by a more unsettling conversation with a staff member later that evening.

The manager testified that between April 16 and April 30 they told the tenant they were proceeding with the process but there was the chance that if he could manage his behaviour he would not be evicted.

At the end of April there was a fire in the building which the manager said slowed things up.

The tenant's May rent was paid by the Ministry to the landlord's head office.

There were serious incidents involving the tenant on May 5 and May 6. The police attended on both days. The police took the tenant away for a few hours that night, without charge, but brought him back that evening because they did not have room in their cells. The May 6 Incident Report concludes " manager has noted that our plan moving forward is to pursue [tenant's] eviction".

On May 11 the landlord asked the tenant to leave on the basis that he was an overholding tenant. The tenant declined.

The landlord filed this application for dispute resolution the next day. After the tenant suggested that they reinstated the tenancy by accepting the May rent and a conversation with the RTB staff they gave the tenant a receipt for the May rent marked "for use and occupancy only:..

After the landlord received the date for this hearing they spoke to the tenant about not proceeding with the application for an order of possession as his behaviour had improved.

A meeting was scheduled for June 12 between the manager and the tenant. The manager testified that the purpose of the meeting was to discuss next steps as they could see improvement in the tenant's behaviour. Her intention was to enter into a new behavioural contract and reinstate the tenancy. According the tenant's material on June 8 the manager told him that she had reconsidered and would withdraw from the arbitration and agree to another behavioural contact. They agreed to meet on June 12. However, there was another incident involving the tenant and another staff member so the landlord decided to go ahead with the dispute resolution hearing.

The tenant's advocate, who has know the tenant for many years pointed out that the tenant has difficulty with memory; was always alone in the conversations with the landlord; and has trouble deciphering mixed messages.

The manager argued that they have given the tenant a lot of opportunities to continue his tenancy and that while this may appear as mixed messages it is the reality of supportive housing.

Analysis

Section 47 of the *Residential Tenancy Act* allows a landlord to end a tenancy for one of the causes listed in the section by serving the tenant with a 1 Month Notice to End Tenancy for Cause in the prescribed form. Subsection 47(4) provides that a tenant may dispute the notice by filing an application with the Residential Tenancy Branch within ten days of receiving it. Subsection (5) states that a tenant who does not file an application for dispute resolution within the time limit is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Section 66(1) allows an arbitrator to extend the time in which a tenant may file their application for dispute resolution when exceptional circumstances exist. However, section 66(3) provides that the time for filing may not be extended past the effective date of the notice.

This 1 Month Notice to End Tenancy for Cause was served on the tenant on March 18. The tenant had until March 28 to dispute the notice and the very latest he could have been granted leave to file an application disputing the notice was April 30, 2015.

As explained in *Residential Tenancy Policy Guideline 11: Amendment and Withdrawal of Notices* notice to end tenancy can be waived and a new or continuing tenancy created with the express or implied consent of the parties. There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights. Implied waiver can also arise where the conduct of a party is inconsistent with any other honest intention than an intention of waiver, provided that the other party concerned has been induced by such conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or her benefit. To show implied waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amounting to an estoppel.

The question of waiver often arises when the landlord has accepted rent from the tenant after the effective date of the notice to end tenancy. Where a landlord has served the tenant with a One-Month Notice to End Tenancy, and then accepts a rent payment for the month after the tenancy was to end, the landlord should clarify with the tenant whether they have reinstated the tenancy.

When a landlord does not want the tenancy to continue, the landlord should:

1. Specifically tell the tenant that the rental payment is being accepted for the use and occupancy only and does not reinstate the tenancy; and,
2. Tell the tenant that they must move out, as required by the Notice to End Tenancy.

In this situation the landlord did not produce a receipt marked “for use and occupancy only” until well after the payment had been accepted and after the tenant suggested they had reinstated the tenancy.

After the landlord served the tenant with the notice to end tenancy they entered into the behavioral contract. The contract does not say that the landlord is intending to act on the notice to end tenancy by applying for an order of possession. It uses much more ambiguous language, saying that breach of the contract will “result in an incident report and/or other action that will endanger [the tenant’s] housing status.”

The landlord’s actions and language from March 18 onward were also ambiguous:

- From March 18 to April 16 they told the tenant many times that if he could maintain his behaviour they would not proceed with the eviction.
- From April 18 on they told the tenant they were proceeding with the process but if he behaved, they would not.
- In fact, the landlord took no action to proceed with the process, i.e. apply for an order of possession, until May 12.
- Even after the date for the hearing was set they made arrangements with the tenant to enter into a new behavioural contract.

Although the landlord told the tenant on March 18 that he could dispute the Notice to End Tenancy if he wanted, the landlord also continually told him that if he complied with the behavioural contract the tenancy would be continued. The tenant continued to receive these assurances from the landlord until after the last possible deadline for disputing the notice to end tenancy had passed. If the landlord had been clear from the time it served the Notice to End Tenancy that it was their intention to end this tenancy the tenant could have filed an application disputing the notice within the time limit or started looking for another place. The effect of the landlord’s actions and lack of action, together with its oral representations, was to induce the tenant into believing that the landlord had waived any rights pursuant to the Notice to End Tenancy and to change his course of conduct to his detriment.

Based on all of the above factors, I find that the landlord waived the 1 Month Notice to End Tenancy dated March 18, 2015. The landlord’s application for an order of possession is dismissed. If the landlord wishes to end this tenancy and thinks it has

cause for doing so it may serve the tenant with a new 1 Month Notice to End Tenancy for Cause.

Conclusion

The landlord's application for an order of possession is dismissed.

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: July 07, 2015

Residential Tenancy Branch

