



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding P & S Developments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction

This hearing dealt with an application by the tenant for orders setting aside a 1 Month Notice to End Tenancy for Cause and extending the time in which to make that application. Both parties appeared. Both parties acknowledged receipt of the other's party's evidence packages.

Issue(s) to be Decided

- Should an extension of time in which to file this application be granted?
- If so, is the notice to end tenancy valid?
- If so, should an order of possession be granted and on what terms?

Background and Evidence

This tenancy commenced about two years ago. At first the tenant lived in one unit. Recently he has moved into another unit in the same building. His rent, which is due on the first day of the month, has remained at \$450.00 throughout his tenancy.

There are eleven units in the building. The landlord bought the building on June 30, 2015.

On August 17, 2015, the landlord issued and served a 1 Month Notice to End Tenancy for Cause. Several reasons were listed on the notice but the only one on which any significant evidence was provided as: "Tenant or a person permitted on the premises by the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord."

The landlord testified that on the long weekend in August she received a telephone call from the neighbour who lives next door to this building. The neighbour reported that there had so much noise at 2:30 am that she had to call the police. The landlord received a telephone call the following day from the same neighbour about the same late night noise that resulted in another call to the police. The neighbour, who did not

testify or file a written statement, told the landlord that the tenant was involved in both incidents. The police would not provide much information to the landlord.

The tenant testified that there was an argument between he and another tenant. The other tenant assaulted him and he called the police about the incident.

A few days later the landlord and the tenant had a brief conversation. The landlord asked the tenant "please, no more issues" and he agreed.

On August 16, at about 8:00 pm, the landlord received a call from the same neighbour. The neighbour held up the telephone so the landlord could hear what was going on outside her building. The landlord heard yelling and screaming. The neighbour told the landlord that the tenant was involved in the proceedings. A few minutes later the same neighbour called and said there was an altercation between another tenant and a guest. That was when the landlord called the police, who attended.

Based upon the fact that there had been three calls to the police within two weeks that appeared to involve the tenant, the landlord issued and served the notice to end tenancy on August 17.

The tenant testified that he was entertaining a friend in his unit when they heard a disturbance outside. His friend was just leaving so he went outside with his friend. When they got outside he observed two people in a scrap. There were a number of other people outside. The police attended and he gave a witness statement. He has not been charged with anything in relation to this incident.

Both the landlord and the tenant testified that everything has been quiet since.

The tenant did not file this application until September 11, 2015, well beyond the time limit for doing so. The tenant's mother said that her son was dealing with some serious health issues and does not have a car. She wanted to have all their evidence ready before filing and it took some time to get this material together. Most of this evidence related to her efforts to collect information and/or obtain action from the local municipality about the landlord's alleged lack of a business licence, non-compliance with local bylaws, and repairs required to the rental unit. In the end all she got was a letter stating that she had complained to the municipality about conditions at this building on February 3 and March 10, 2015.

The October rent was paid by the Ministry and the November rent was paid in cash by the tenant. The landlord only gave a receipt for the November rent. No special notation was made on the receipt.

Analysis

Section 47(4) of the *Residential Tenancy Act* provides that a tenant who has been served with a 1 Month Notice to End Tenancy may dispute the notice by filing an application with the Residential Tenancy Branch within ten days after the date the tenant receives the notice.

Section 47(5) sets that a tenant who does not file an application with Residential Tenancy Branch disputing the notice 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.

This information is set out on the second page of the notice to end tenancy form.

Section 66(1) allows an arbitrator to extend a time limit only in exceptional circumstances. What may be and may not be considered exceptional circumstances are explained in *Residential Tenancy Policy Guideline 26: Extending a Time Period*. The *Guideline* sets out some examples of what are not considered exceptional circumstances including:

- The party who applied late for arbitration was not feeling well.
- The party did not know the applicable law or procedure.
- The party was not paying attention to the correct procedure.
- The party relied on incorrect information from a friend or relative.

The tenant's explanation for the delay does not meet the required criteria. First of all, the tenant could have filed his application within the required time limit and then served and filed any additional evidence later. The Rules of Procedure provide that the applicant's evidence should be served on the other side and filed with the Residential Tenancy Branch at least fourteen days before the date set for the hearing. Secondly, the evidence the tenant was trying to collect appeared to have more to do with a possible application for repairs or rent reduction than an application to have a notice to end tenancy set aside. Accordingly, the tenant's application for an extension of time in which to file this application is dismissed.

I will add, just for the general information of the landlord, that if the tenant had filed his application within the time required, on the hearing itself the landlord bears the onus of proving the grounds stated in the notice, on a balance of probabilities. In this case, the

landlord's evidence consisted of hearsay evidence, which is permissible in Residential Tenancy Branch hearings. However, that hearsay evidence was contradicted by the sworn testimony of the tenant. The neighbour who actually witnessed the events did not testify nor did she file a written statement. Additionally, there was no other evidence filed by the landlord. The evidence boiled down to the landlord reporting what she was told and the tenant testifying that events were different than that. There was nothing to tip the balance of probabilities in the landlord's favour.

Although the effective date of the notice was stated to be September 16 pursuant to section 47(2) the effective date of the notice is actually September 30 and pursuant to section 53 the notice is automatically corrected so its' effective date is the correct date. The tenancy ended on September 30, 2015.

After the tenancy had ended on September 30 the landlord accepted the rent for October and November.

As explained on the Residential Tenancy Branch web site, 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 in writing 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."

This is usually accomplished by the landlord giving the tenant a receipt that states the rent payment is being "accepted for use and occupancy only".

It makes no difference whether the landlord accepted a rent payment offered by the tenant for that month, cashed a post-dated cheque that was already in the landlord's possession, or received a payment from a third party, such as social assistance, for the rent. If the rent has been accepted for the month after the tenancy was to end, the landlord must give the tenant a receipt that makes it clear the rent is being accepted for "use and occupancy only" or the tenancy will usually be reinstated.

As the landlord did not make it clear that she was not reinstating the tenancy by accepting the rent for those two months I find that she has reinstated the tenancy. The tenancy will continue on the same terms until ended in accordance with the legislation.

If there should be other problems involving the tenant the landlord may always serve a new 1 Month Notice to End Tenancy for Cause.

Conclusion

For the reasons set out above, the tenancy has been continued.

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 24, 2015

Residential Tenancy Branch

