



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FALSE CREEK MANAGEMENT 2006 LTD
SOUTHVAN FOUNDATION
and (tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause, dated April 27, 2016 ("1 Month Notice"), pursuant to section 47.

The landlords' two agents, "landlord AB" and "landlord JC" (collectively "landlords") and the tenant and his advocate, NA (collectively "tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant confirmed that his advocate had authority to speak on his behalf at this hearing. Both agents confirmed that they had authority to represent both landlord companies named in this application at this hearing. Landlord JC joined the teleconference at approximately 11:11 a.m., when the hearing began at 11:00 a.m., because he was on a flight. I advised landlord JC about the proceedings that had occurred during his absence.

The landlords confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and the tenant confirmed receipt of the landlords' written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's Application and the tenant was duly served with the landlords' written evidence package.

The tenant confirmed receipt of the landlords' 1 Month Notice on April 27, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on April 27, 2016.

Issues to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an order of possession for cause?

Background and Evidence

The landlords said that this month-to-month tenancy began sometime in December 2004, while the tenant said that it began on December 7, 2004. Both parties agreed that monthly rent in the subsidized amount of \$320.00 is payable on the first day of each month and a security deposit of \$175.00 was paid by the tenant and the landlords continue to retain this deposit. The tenant continues to reside in the rental unit.

The landlords issued the 1 Month Notice, with an effective move-out date of May 31, 2016. The notice indicates the following reason for ending this tenancy:

- *Tenant or a person permitted on the property by the tenant has:*
 - *Significant interfered with or unreasonably disturbed another occupant or the landlord.*

The landlords provided a number of complaint letters from other tenants in the rental building dating back to 2012 and 2013. The landlords indicated that the tenant videotaped another tenant without permission and the tenant harassed other tenants regarding them smoking where they were lawfully permitted to smoke.

The landlords said that although the complaint letters from 2012 and 2013 were submitted for a previous hearing, that was regarding the tenant's application, not any 1 Month Notices or applications by the landlord to end the tenancy. The tenant said that the landlord cannot use the same letters against him and the previous hearing application was dismissed. The file number for the previous hearing appears on the front page of this decision.

The landlords explained that the complaints against the tenant went away for some time but recently resurfaced again in April 2016, when the tenant wrote letters to the landlord making "libelous allegations" and threatening to "sue" the landlord for \$25,000.00. The landlords provided copies of three letters from the tenant, dated April 11, 22 and 25, 2016. The letters are complaints from the tenant regarding other tenants in the rental building as well as the landlords' management of the building, and the tenant's own safety concerns. The letters also reference the fact that the tenant was told by the Residential Tenancy Branch ("RTB") to communicate with the landlord in writing in order to document his concerns and receive a response. The letters discuss the maximum monetary limit of the RTB as \$25,000.00.

The tenant disputes the landlords' 1 Month Notice, indicating that the landlords are re-raising issues from 2012 and 2013, without providing new information.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the parties and the tenant's advocate, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings are set out below.

According to subsection 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the tenant receives the notice. The tenant received the 1 Month Notice on April 27, 2016, and filed his Application on May 3, 2016. Therefore, the tenant is within the time limit under the Act. The onus, therefore, shifts to the landlords to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

Residential Tenancy Policy Guideline 11 discusses the issue of waiver of a 1 Month Notice:

A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both 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 detriment. 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 amount to an estoppel.

I find that the issues from the letters in 2012 and 2013 were not dealt with at the previous hearing in January 2013, as that was the tenant's application regarding the landlords' behaviour, not any notices to end tenancy or applications issued by the landlords. Therefore, I find that I am not *res judicata* regarding those letters and this matter.

I find that the landlords are attempting to re-raise issues with the tenant from 2012 and 2013 that have already been resolved. I find that the landlords not pursuing an end to the tenancy or issuing notices to end tenancy at the time of the complaints, amounts to a waiver to issue a notice to end tenancy three to four years later. I find that the landlords continued the tenancy and the tenant relied on the landlords' conduct in this regard.

I further find that the allegations against the tenant regarding his recent April 2016 correspondence to the landlords do not amount to significant interference or unreasonable disturbance. The tenant is documenting his concerns in writing against the landlords and advising the landlords about his legal rights to pursue monetary claims up to \$25,000.00 at the RTB. I do not find this to be a revival of the tenant's previous behaviour from 2012 and 2013, as documented in the complaint letters from other tenants.

For the above reasons, and given the conduct of the parties, I find that the landlords waived their rights to pursue an Order of Possession based on the 1 Month Notice. I find that the landlords continued this tenancy, despite the tenant's behaviour in 2012 and 2013. I find that

the recent behaviour by the tenant in communicating with the landlords in writing in April 2016 does not amount to significant interference or unreasonable disturbance.

On a balance of probabilities and for the reasons stated above, I allow the tenant's application to cancel the landlords' 1 Month Notice, dated April 27, 2016. The landlords' 1 Month Notice, dated April 27, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The tenant's Application to cancel the landlords' 1 Month Notice, dated April 27, 2016, is allowed. The landlords' 1 Month Notice, dated April 27, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: June 06, 2016

Residential Tenancy Branch