



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SWEDISH CANADIAN MANOR SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

The landlord applies for an order of possession pursuant to a one month Notice to End Tenancy dated August 22, 2016 and which the tenant acknowledges receiving on that date.

Both parties attended the hearing, the landlord by its representative Mr. T.A., and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the Notice had the effect of ending this tenancy, entitling the landlord to an order of possession?

Background and Evidence

The facts are not in dispute. The rental unit is a bachelor apartment, nowadays called a "studio" apartment, in a subsidized, seniors complex.

The tenancy started in July 2006. Currently the monthly rent is \$399.00. The landlord holds a \$150.00 security deposit.

The tenant is 72 years old. She has a bad heart and is legally blind. At some time in the past her homeless 50 year old daughter and homeless twenty year old son moved in and began to live there. They are still living there.

The landlord and the tenant have had a number of conversations about the impermissibility of the arrangement but it has not changed.

The landlord issued the Notice in question on the ground that the tenant has allowed an unreasonable number of occupants in the rental unit.

The tenant received the Notice and her daughter and grandson read it to her. She is not disabled by any cognitive impairment.

She did not make an application to cancel the Notice.

Analysis

As the tenant did not make an application to cancel the Notice I have no authority to determine at this hearing whether or not the tenant has “allowed an unreasonable number of occupants in the rental unit.”

The tenant’s daughter indicates that her mother has paid rent since the Notice. In some cases the payment of rent after a Notice to End Tenancy can result in the reinstatement of a tenancy. In cases where the reason for the Notice is non-payment of rent a rent payment, unconditionally accepted by the landlord as rent, may be strong evidence of a reinstatement of the tenancy.

In this case however, where the cause for the Notice is the conduct of the tenant, clear evidence would be required to show that the landlord was not only accepting rent but also agreement to forego the Notice given for cause. There is no such evidence here.

The tenant’s daughter indicated that she expected the landlord to remind them or indicate the landlord was serious about the Notice. There is no such obligation on a landlord. The Notice is meant to speak for itself.

Section 47 of the *Residential Tenancy Act* is clear: a tenant who fails to apply to cancel a one month Notice 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.

As a result, in these circumstances this tenancy ended on September 30, 2016.

Conclusion

The landlord's application is allowed. This tenancy ended on September 30, 2016 and the landlord is entitled to an order of possession.

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, 2016

Residential Tenancy Branch