



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing, and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

The tenant confirmed receipt of the landlord's 1 Month Notice on July 2, 2017, with an effective date of August 31, 2017. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This month-to-month tenancy began around March or April 2016, with monthly rent currently set at \$1,244.00 per month, payable on the first of each month. The landlord currently holds a security deposit of \$600.00.

The landlord submitted the notice to end tenancy providing three grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;

2. The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
3. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testified during the hearing that the tenant has not engaged in illegal activity, and that this was indicated error. The landlord indicated in the hearing that she was pursuing an Order of Possession for the first two reasons.

The landlord provided the following reasons for why she was seeking the end of this tenancy. The landlord testified that the tenant had requested a new refrigerator as it stopped working. The landlord attempted to repair the refrigerator, but after not being able to do so, she had replaced the tenant's fridge with one that was in the garage.

The landlord testified that the tenant refused delivery of this refrigerator, and argued with the landlord's father stating that she wanted a brand new one. The landlord testified that the tenant was difficult to deal with, and caused her great stress and anxiety. The landlord testified that the relationship she had with the tenant was a difficult one, where the tenant would often refuse entry to her unit, even with proper notice. The landlord's witness in the hearing testified that the tenant had refused delivery of the refrigerator.

The tenant disputes the landlord's testimony, stating that she had always allowed access to her suite. The tenant testified that she was upset after losing \$200.00 worth of food due to the non-functioning refrigerator, and that the landlord dismissed her concerns. The tenant testified that the replacement refrigerator was dirty and contained a dead worm inside. The tenant testified that she was harassed by the landlord for rent despite never being late, and that the landlord was the difficult party to deal with.

The landlord indicated in the hearing that she had accepted rent for September 2017, after the effective date of the 1 Month Notice, and did not indicate that the payment was for use and occupancy only.

Analysis

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant filed her application on July 6, 2017, four days after receiving the 1 Month Notice. As the tenant filed her application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving she has cause to end the tenancy.

It was undisputed by both parties that the tenant had paid rent after the effective date of the 1 Month Notice, which was accepted by the landlord. It was also undisputed that the landlord did not indicate to the tenant that this payment was for “use and occupancy” only.

Residential Tenancy Policy Guideline #11 discusses the Amendment and Withdrawal of Notices, specifically what happens when payment is accepted after the effective date of a Notice is given.

"The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- *whether the receipt shows the money was received for use and occupation only.*
- *whether the landlord specifically informed the tenant that the money would be for use and occupation only, and*
- *the conduct 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 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....

In order to be effective, a notice ending a tenancy must be clear, unambiguous and unconditional.”

By accepting payment after the 1 Month Notice was issued to the tenant, particularly after the effective date of the Notice, and without indicating that this payment was for use and occupancy only, I find that the landlord had implied that that this tenancy was reinstated, and to continue as per the *Act* and tenancy agreement.

As noted above, the notice to end tenancy must be clear, unambiguous and unconditional. By accepting rent payment after the effective date of the Notice without informing the tenant that this payment was for use and occupancy only, the Notice became ambiguous whether this tenancy had ended on the effective date of August 31, 2017 or not. Accordingly, I find that the landlord had implied that the tenancy was reinstated, and I allow the tenant's application to cancel the 1 Month Notice dated July 2, 2017. This tenancy is to continue as per the *Act*, regulation, and tenancy agreement.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice dated July 2, 2017. The 1 Month Notice of is of no force or effect. This tenancy continues until 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: September 29, 2017

Residential Tenancy Branch