



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR OPR

Introduction:

Both parties attended the hearing and gave sworn testimony. The landlord said they served the tenant with a 10 Day Notice to End the Tenancy for non-payment of rent dated August 16, 2017 to be effective August 26, 2017. The tenant said they served the landlord with their Application for Dispute dated August 21, 2017 by registered mail. Both parties acknowledged receipt. I find the documents were legally served pursuant to sections 88 and 89 of the Act. The tenant applies pursuant to section 46 of *The Residential Tenancy Act* (the Act) to cancel the Notice to End Tenancy.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. It is undisputed the tenancy began on December 1, 2014. The current rent is \$833 and a security deposit of \$402.50 was paid. In a previous hearing held August 28, 2017, the parties settled the arbitration on a Notice to End Tenancy issued in July 2017. The tenant agreed to pay the \$660 outstanding rent for May 2017 by September 8, 2017 and the landlord agreed to withdraw the Notice to End Tenancy dated July 10, 2017. The landlord testified that a further Notice to End Tenancy was issued on August 16, 2017 for \$650 in outstanding rent. He said payments were made after this second Notice was issued but they did not issue receipts "for use and occupancy" as they were getting payments from third parties.

A rental ledger was enclosed showing the tenant made partial payments totalling \$1468 in September 2017. The landlord said they wanted to proceed because the tenant did not keep her promise to pay the \$660 by September 8, 2017 and there were other issues with the tenancy. The ledger shows that \$650 was paid by September 11, 2017. The previous arbitrator had stated that if the tenant did not abide by her promise, the landlord had the right to request an Order of Possession based on unpaid rent identified

as owing on the 10 Day Notice of August 16, 2017. The landlord asks for an Order of Possession if the tenant is unsuccessful.

The tenant said she had made arrangements for agencies to pay her rent directly so she would avoid being late again. She thought that her tenancy was continuing based on the acceptance by the landlord of those payments.

In evidence is the lease, a rental ledger, the previous decision and two 10 Day Notices to End Tenancy, one dated in July and one in August.

Analysis:

The Notice to End a Residential Tenancy is based on non-payment of rent. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent.

I find the intent of the landlord to end the tenancy is in question. They continued to accept rent for August and September without making clear they were not continuing the tenancy. Residential Tenancy Policy Guideline 11 states in part:

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.*

By continuing to accept rent without limitation, I find the landlord in effect implied they had waived their Notice to End Tenancy. I find the tenant relied on this and overpaid her rent for September 2017. I set aside and cancel the Notice to End Tenancy dated August 16, 2017 for I find the landlord by their conduct implied they had waived it.

The landlord talked with the tenant at the end of the conference. They advised her that they would be issuing a letter stating that if they had to issue a 10 Day Notice to End Tenancy again, any rent received subsequently from third party agencies would be

accepted “for use and occupancy only” for they had no intention of continuing the tenancy if rent payments continued to be late.

The tenant also promised to be honest and forthright in her dealings with them.

Conclusion:

I set aside and cancel the Notice to End Tenancy dated August 16, 2017 for the reasons set out above. The 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: October 11, 2017

Residential Tenancy Branch