



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC FFL CNC OLC FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant were duly served with the Applications and evidence.

The tenant confirmed receipt of the 1 Month Notice, which was posted on her door on July 26, 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?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are both parties entitled to recover the filing fees for their applications?

Background and Evidence

This month-to-month tenancy began on September 1, 2016, with monthly rent currently set at \$1,037.00 per month, payable on the first of each month. The landlord currently holds a security deposit of \$500.00. The tenant continues to reside in the rental suite.

The landlord submitted the notice to end tenancy providing four 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;
3. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant; and
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The landlord testified during the hearing that the tenant has not engaged in any illegal activity, and that this was indicated error. The landlord indicated in the hearing that she was pursuing an Order of Possession on this ground.

The landlord provided the following reasons for why she was seeking the end of this tenancy. The landlord testified that the tenant had significantly interfered with her duties as a landlord by refusing to provide access unless in the case of an emergency. The landlord testified in the hearing that she had never given any written notices to the tenant before attempting to enter her suite, but on January 9, 2017 the tenant had placed her hand on her stating "you do not need to be here". The tenant disputes this, stating that she never pushed the landlord. The landlord testified that there was a witness to this incident, but he was unable to attend the hearing.

The landlord also testified that the tenant kept a dog in her suite, which the landlord had originally allowed, but which permission the landlord later rescinded. The landlord acknowledged that she had allowed the dog to stay, confirming that there was no "no pet" policy on the tenancy agreement, but stated that she had the right to rescind her permission.

The landlord further testified in the hearing that the tenant failed to pick up the dog feces in the yard. The landlord called a witness who confirmed that he house sat for the landlord while she was on vacation, and that he would pick up dog feces from the yard. The witness testified that he had never witnessed the tenant or the dog in the yard.

The landlord testified that on April 17, 2017 she left a tenant a handwritten note, which was entered as part of the landlord's evidence. The note read: "your daughter's dog is not welcome on my property. If I find her fecal matter on my property again, you will find it smeared on your car door handles. You have been previously asked to pick it up". The landlord testified that she left this note, along with a bag full of the feces, on the tenant's door step. The landlord testified that the tenant ignored her concerns for her, and her family's health and safety, and the tenant responded by way of a "cease and desist letter", stating that the landlord was threatening her.

The landlord also testified in the hearing that the tenant refused to update her with her latest employer information. The tenant testified in the hearing that this was not a requirement of the tenancy agreement or the *Act*, and that she provided this information upon her initial application to rent the suite.

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

The tenant disputes the landlord's 1 Month Notice, as well as the ground provided for ending this tenancy. The tenant requested an Order for the landlord to comply with the *Act* as the landlord was harassing her by calling her names and sending her threats.

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 August 7, 2017, nine days after considered to have been deemed served with 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 26, 2017. This tenancy is to continue as per the *Act*, regulation, and tenancy agreement.

As the tenant was successful in her application, I allow her to recover the filing fee for her application. The landlord's application to recover the filing fee is dismissed.

As I find the tenant failed to provide sufficient supporting evidence and testimony as to what particular section of the *Act* or part of the tenancy agreement the landlord failed to comply with, I dismiss the tenant's application for the landlord to comply with the *Act*, tenancy agreement, or regulation. I reminded the landlord in the hearing that she must abide by section 29(1) of the *Act* when she wished to enter the tenant's suite, as stated below.

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the

entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice dated July 26, 2017. The 1 Month Notice of is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 1, 2017

Residential Tenancy Branch