



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.

NZ appeared as agent for the landlord, and had full authority to do so. EC spoke on behalf of the tenant as agent in this hearing, and had full authority to do so. 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 September 29, 2017, with an effective date of October 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 on November 15, 2006 with monthly rent currently set at \$699.00 per month, payable on the first of each month. The landlord currently holds a security deposit and pet damage deposit of \$325.00 each.

The landlord submitted the notice to end tenancy providing two 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; and

2. 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 provided the following reasons for why they were seeking the end of this tenancy. The landlord testified during the hearing that they had discovered missing items in the tenant's storage locker. The landlord believes that the tenant had engaged in illegal activity by stealing these items. The tenant disputes this, stating that the lock to her locker was tampered with. The landlord confirmed in the hearing that no charges were ever laid, but that the tenant was issued a warning letter following this incident.

The landlord also testified that the tenant was aggressive towards others including the management and staff. The landlord also testified that the tenant has attacked other residents, and was involved in frequent altercations with others. The tenant disputes this, stating that was assertive. The tenant's agent also testified that the altercations involved other occupants, and was a past issue.

The landlord indicated in the hearing that they had accepted rent from the tenant for September, October, November, and December 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 October 12, 2017, 10 days after being deemed to have received 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 they have 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 October 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

September 29, 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 September 29, 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: December 20, 2017

Residential Tenancy Branch