



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 202461 HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC LAT FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order to allow the tenant to change the locks to the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*.

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

The landlords confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlords were 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 1 Month Notice on December 15, 2017. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

The tenant indicated at the beginning of the hearing that she was withdrawing her application for an order to change the locks. Accordingly, this portion of the tenant's application was cancelled.

Issues

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for her application?

Background and Evidence

This month-to-month tenancy began in January 2013, with monthly rent currently set at \$797.00 per month, payable on the first of each month. The landlords currently hold a security deposit of \$355.00. The tenant continues to reside in the rental suite.

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

1. 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;
2. 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
3. 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 landlords provided the following reasons for why they were seeking the end of this tenancy. The landlords testified that on December 13, 2017 the tenant had requested the locks be changed, and then proceeded to tell the landlord she would do so herself. The landlord did not give permission for the tenant to do so, and as the landlords were unable to obtain confirmation whether the tenant had changed the locks, the landlords obtained services of a locksmith to re-key the tenant's locks just in case.

The tenant disputes this, stating that although she did request that the locks be changed, she did not proceed with the lock change. She testified that she did make a call to the locksmith, but she had cancelled the appointment.

Both parties confirmed in the hearing that the landlords had accepted rent for February 2018, 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 December 18, 2017, three days after being served the 1 Month Notice. As the tenant filed her application within the required period, and having issued a notice to end this tenancy, the landlords have 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 landlords. It was also undisputed that the landlords 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 landlords 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 corrected effective date of January 31, 2018 or not. Accordingly, I find that the landlords had implied that the tenancy was reinstated, and I allow the tenant's application to cancel the 1 Month Notice dated December 15, 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.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice dated December 15, 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 landlords must be served with **this Order** as soon as possible. Should the landlords 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: February 8, 2018

Residential Tenancy Branch