



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC FFT OLC

Introduction

This hearing dealt with the tenants' application pursuant to 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;
- 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*.

CM and ML appeared on behalf of the landlord 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's agents confirmed receipt of the tenants' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials that they were ready to proceed.

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The tenants confirmed receipt of the 1 Month Notice, which was posted on their door on April 27, 2018. Accordingly, I find that the 1 Month Notice was served to the tenants 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?

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

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

This month-to-month tenancy began on September 1, 2015, 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 \$487.50. The tenants continue to reside in the rental suite.

The landlord issued a 1 Month Notice to End Tenancy on April 27, 2018, 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.

It was undisputed by all parties that an incident took place on April 25, 2018 where one of the tenants had entered another unit in the building. The evidence provided by the landlord and the landlord's witnesses was that the tenant entered the unit after an occupant opened the door, and the tenant proceeded to act strangely and take off his pants. The tenant then caused the occupants great alarm, and the police were called, and an ambulance was called to give the tenant medical attention.

The landlord believes this is grounds for the end of the tenancy as the landlord and other occupants found the incident disturbing and threatening. The landlord fears that the tenant is unpredictable, and could jeopardize the health and safety of others.

The landlord's agent testified that the incident violated a material term of the tenancy agreement. The landlord provided a copy of the addendum that prohibits "any criminal activity that threatens the health, safety, or welfare of the landlord, other resident(s), or person(s) on the residential property or premises". The landlord confirmed that no written warnings have been given to the tenant. The landlord did not provide evidence to support that the tenant was charged under the Criminal Code of Canada.

Both parties confirmed in the hearing that the landlord had accepted rent for June 2018, after the effective date of the 1 Month Notice, and did not indicate that the payment was for use and occupancy only.

The tenants testified that the incident on April 25, 2018 was the result of the tenant's disorientation following a seizure, and not because the tenant was under the influence of alcohol or drugs, or other illegal activity. The tenant provided in their evidence medical documentation, including a doctor's note, confirming that the tenant suffered from seizures and that the April 25, 2018 incident was due to the tenant's medical condition. The doctor provided confirmation that the tenant's medical condition is now under control.

The tenant testified that he had returned home that day after an interview and was not feeling well. He last recalled taking his blood pressure, and he had taken his pants off as he was disoriented and thought he was in his own home.

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 tenants filed their application on May 4, 2018, four days after the date the tenants are deemed to have received the 1 Month Notice. As the tenants 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 May 31, 2018, or not.

Furthermore, I find that the landlord failed to provide sufficient evidence to support that the tenants had participated in any illegal activity. The landlord did not provide any confirmation that any of the tenants have been charged under the Criminal Code of Canada.

The landlord indicated on the 1 Month Notice that the tenant had breached a “material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.” I find that the landlord did not meet the requirements for an Order of Possession on these grounds as the landlord did not provide any written notices to the tenant that 1) he had breached a material term and 2) that any future breaches could result in the end of this tenancy if he continued to beach the same material term.

Although it was undisputed by the tenants that the tenant did enter another unit without permission, and in a manner that disturbed other occupants and the landlord, I find that the tenants have provided sufficient evidence to demonstrate that this was an isolated incident that had taken place due to a medical incident. I find that the tenant did not physically harm any occupant or the landlord, and I accept the evidence of the tenant’s doctor that the tenant’s medical condition is now under control.

For the reasons cited above, I find that the landlord has not met their burden of proof in establishing that they have cause to end this tenancy under section 47 of the *Act*, and accordingly I am allowing the tenants’ application for cancellation of the 1 Month Notice dated April 27, 2018. The tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

As I find the tenants did not 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 tenants’ application for the landlord to comply with the *Act*, tenancy agreement, or regulation.

I find that the tenants are entitled to recover the filing fee for this application.

Conclusion

I allow the tenants’ application to cancel the 1 Month Notice dated April 27, 2018. The 1 Month Notice of is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenants’ application for the landlord to comply with the *Act*, tenancy agreement, or regulation is dismissed.

I allow the tenants 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 tenants are 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: June 29, 2018

Residential Tenancy Branch