



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenants seeking an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlord for the cost of the application.

The tenants and the landlord attended the hearing. The landlord gave affirmed testimony, and one of the tenants gave submissions without testifying under affirmation. The tenants were also given the opportunity to question the landlord.

During the course of the hearing the landlord objected to the tenants' late service of the hearing package upon the landlord. The tenants filed the Application for Dispute Resolution on August 5, 2018 and received a Hearing Package from the Residential Tenancy Branch on August 8, 2018, which included a Notice of Hearing, to serve on the landlord. The tenants have provided evidence of serving the landlord by registered mail on August 24, 2018. One of the tenants responded stating that the Hearing Package was originally sent to the landlord by registered mail on August 11, 2018, but to an incorrect address, having transposed the address numbers, and the Tenant's Application for Dispute Resolution also contained an incorrect address of the landlord. The tenants filed an Amendment to the application on August 29, 2018, which is signed and dated by a tenant on August 27, 2018 amending the address of the landlord, and re-served the Hearing Package upon landlord by registered mail on August 24, 2018 to the correct address of the landlord. The tenants were given the opportunity to provide proof of the first service after the hearing had concluded. I have now received a Canada Post cash register receipt dated August 11, 2018 and a Registered Domestic Customer Receipt addressed to the landlord with matching tracking numbers, and I accept the testimony of the tenant.

The *Residential Tenancy Act* states that a party who makes an Application for Dispute Resolution must serve the other party within 3 days or within a different period specified by the director. Given the evidence, I am satisfied that the tenants attempted to serve the landlord within 3 days, and I accept that an inadvertent error existed, and I specify that extra time and the tenants are deemed to have served the landlord in accordance with the *Residential Tenancy Act*.

No further issues with respect to exchange of documents or evidence were raised by the parties and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, or does “estoppel” apply?

Background and Evidence

The landlord testified that this tenancy began on November 1, 2017 and the tenants still reside in the rental unit. Rent in the amount of \$1,300.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$650.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is the upper level of a duplex, and the lower level is also tenanted. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that on July 26, 2018 he served a One Month Notice to End Tenancy for Cause upon the tenants by attaching it to the door of the rental unit. A copy of the Notice has been provided as evidence for this hearing and it is dated July 26, 2018 and contains an effective date of vacancy of August 31, 2018. The reason for issuing it states: “Tenant is repeatedly late paying rent.”

Rent has always been paid by Interac e-transfer, and the tenants were late with rent on the following dates: November 2, 2017; January 2, 2018; 3 installments in February, 2018, the last of which was paid on February 7, 2018; April’s rent was paid in 2 installments, the last of which was paid on April 2, 2018; June’s rent was paid on June 6 and 7, 2018 and July’s rent was paid on July 3, 2018.

The landlord referred to text messages and emails exchanged between the parties, copies of which have been provided for this hearing, to establish the dates that the Interac e-transfers were made and other messages:

- For the first month of the tenancy the tenant advised the landlord that there was a problem with the operation of the on-line banking system, and the landlord replied that it was no problem, and the e-transfer completed on November 2, 2017.
- On January 2, 2018 the tenants advised the landlord that the e-transfer would arrive “in a little bit,” and the landlord replied with a “Thanks,” and the e-transfer completed that day.
- In February the late transfers were received by the landlord and the landlord replied, “Thank you for keeping me informed.”
- On April 1, 2018 the tenants transferred \$1,280.00 and another \$20.00 on April 2, 2018 the landlord texted the tenants with a “thumbs up,” after the transfer was completed.
- On June 3, 2018 the tenants emailed the landlord stating that the bank is holding a cheque, and a partial payment would be paid the following day and the balance in a few days, and hoping that it’s not too much of an inconvenience. The landlord replied that rent is due on the 1st, and the landlord counts on it because the mortgage payment is due on the first. It also asks the tenants to ensure rent is paid on time going forward.
- July’s rent was received by the landlord on the 3rd of the month, and the tenants’ text message indicates that it was due to the July long weekend.
- On July 15, 2018 the landlord sent an email to the tenants stating that rent is due on the first of the month and has been late 4 times. It also states that rent will increase by \$50.00 per month, a notice of that would be left for the tenants in the next 2 weeks, and asks that the tenants remove a boat and car and maintain the lawn. One of the tenants replied on July 18 asking for a receipt so the tenants can get the following month’s rent on time.

When asked by one of the tenants what changed between the time the email was sent to the tenants on July 15, 2018 and the issuance of the One Month Notice to End Tenancy for Cause on July 26, 2018, the landlord testified that he changed his mind.

The tenants did not testify, however one of the tenants made submissions.

The tenant submitted that “estoppel” applies, since rent was paid late for several months and no demand for rent to be paid on time was made by the landlord until June, 2018. That became an agreement of sorts. The tenants were under the impression that they could pay rent a few days late, and that was no big deal to the landlord. The landlord seemed happy and quite comfortable with it on those occasions.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause (the Notice), and I find that it is in the approved form and contains information required by the *Act*. In this case, the reason for issuing it is in dispute.

I refer to case law that deals with the tenant's submission of estoppel:

The principle of estoppel prevents a person from insisting on his strict legal rights whether arising under a contract, or on his title deeds, or by statute, where it would be inequitable for him to do so having regard to the dealings which have taken place between the parties: *Hughes v. Metropolitan Railway Co.* (1877) 2 App.Cas.439. Lord Denning in *Combe v. Combe*, [1951] 1 All E.R. 767 (C.A.) put it this way:

The principle, as I understand it, is that where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance has been made by him...

Mr. Justice Hinds of the Court of Appeal of British Columbia in *Zelmer et al. v. Victor Projects Ltd. et al* 97-0319, Vancouver Registry, Docket CA021163, 7 May, 1997, put it this way:

Short of an actual promise, if he, by his words or conduct, so behaves as to lead another to believe that he will not insist on his strict legal rights knowing or intending that the other will act on that belief and he does so act, that again will raise an equity in favour of the other....

The cases show that this equity does not depend on agreement but on words or conduct.

In this case, the tenant submits that the landlord didn't enforce previous late payments of rent, and by not making demands until June, 2018; the tenants believed that paying rent a few days late was not a problem.

I have reviewed the text messages and emails exchanged between the parties, including the June 4, 2018 email from the landlord specifying that rent is due on the first

of the month. However, after that and particularly on July 15, 2018 the landlord makes requests of the tenants going forward, including a heads-up about a rent increase, maintenance requests, and about paying rent on the 1st day of each month, and then changed his mind about that and issued a notice to end the tenancy for repeated late rent on July 26. I find that the landlord did make an assurance to the tenants that were intended to affect the legal relations between the parties and be acted on accordingly, and the landlord cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made. Therefore, I cancel the One Month Notice to End Tenancy for Cause and the tenancy continues.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in that amount in favour of the tenants and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated July 26, 2018 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act*, and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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: September 27, 2018

Residential Tenancy Branch