



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding H AND L CONDO SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNR, LRE, OLC

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- 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;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

This matter was set for a conference call hearing at 9:30 a.m. on this date. The tenant did not attend. The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The landlord confirmed that they were served with the tenants' application for dispute and that she was aware of the listed issue(s).

I waited until 11 minutes past the start of the scheduled hearing time in order to enable both parties to connect with this teleconference hearing.

Rule 7 of the Rules of Procedure provides that:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the tenants and in the absence of the tenant's participation in this hearing, I order the application dismissed without leave to reapply. I make no findings on the merits of the matter.

Pursuant to section 55 of the Act, the landlord seeks an order of possession to end the tenancy. A review of the evidence submissions by both parties do not reveal a copy of the 1 month notice to end tenancy. The landlord confirmed that a copy of the 1 month notice was not provided. As such, I find that the landlord's request for an order of possession based upon the 1 month notice is dismissed with leave to reapply.

The landlord also seeks an order of possession pursuant to section 55 of the Act based upon the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 20, 2019. The landlord stated that the tenants were served with this 10 Day Notice on June 20, 2019 in person to the tenant, T.J. The 10 Day Notice states that the tenants failed to pay rent of \$1,750.00 that was due on June 1, 2019 and provides for an effective end of tenancy date of June 30, 2019.

The landlord stated that a partial rent payment of \$675.00 was paid via a monthly assistance cheque that was received on June 23, 2019. The landlord confirmed that verbal notice was given to the tenant of receipt of this partial payment.

Residential Tenancy Branch, Policy Guideline #11, Amendment and Withdrawal of Notices states in part,

Notice to End Tenancy

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation) set out the requirements¹ for giving a Notice to End Tenancy. The Legislation² allows an arbitrator, on application, to amend a Notice to End Tenancy where the person receiving the notice knew, or should have known, the information that was omitted from the notice, and it is reasonable in the circumstances.

In determining if a person "should have known" particular facts, an arbitrator will consider whether a reasonable person would have known these facts in the same circumstances. In determining whether it is "reasonable in the circumstances" an arbitrator will look at all of the facts and consider, in particular, if one party would be unfairly prejudiced by amending the notice.

A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.

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

In this case, I find that the landlord accepted partial rent payment after the effective date of the notice without providing any notice of "use and occupancy only". Based upon these submissions by the landlord, I find that the 10 Day Notice dated June 20, 2019 is cancelled. The landlord's request for an order of possession is dismissed.

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: August 27, 2019

Residential Tenancy Branch