



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC FFT OLC

Introduction

This hearing dealt with the tenant's application pursuant to 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 requiring the landlords 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 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 make submissions, to call witnesses and to cross-examine one another.

The landlords confirmed receipt of the tenants' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlords were duly served with the Application. All parties confirmed receipt of each other's evidentiary materials that they were ready to proceed.

The tenant confirmed receipt of the 1 Month Notice dated May 27, 2019, which was posted on his door on May 28, 2019. In accordance with section 88 and 90 of the *Act*, I find that the 1 Month Notice was deemed served on June 1 2019, 3 days after posting.

The tenant confirmed at the beginning of the hearing that the dispute regarding the washer and dryer has been resolved, and he no longer requires an Order. On this basis, the tenant's application for the landlords to comply with the *Act* and tenancy agreement.

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 this application?

Background and Evidence

This month-to-month tenancy began on October 1, 2017, with monthly rent currently set at \$1,500.00 per month, payable on the first of each month. The landlords currently hold a security deposit of \$750.00. The tenant continues to reside in the rental suite. The landlords confirmed in the hearing that the tenant has paid rent for July 2019. The tenant was not informed that this payment was for use and occupancy only.

The landlords served the tenant with a 1 Month Notice, with an effective date of June 30, 2019, providing the following 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. 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 landlord IS testified in this hearing that there are 3 rental units in the 2 level house. The tenant lives in the rental unit on the side of the house. The landlords had decided to issue the 1 Month Notice to the tenant as they feel the tenant had been repeatedly disrespectful to the landlord and the other tenants through his intimidating and threatening behaviour and language. The landlords testified that they had communicated this to the tenant, and the tenant has failed to remedy the situation. The landlords testified that they had a duty to provide a safe environment and quiet enjoyment to all their tenants, and this tenant has prevented them from doing so. The landlords issued caution notices to the tenant, which was included in their evidentiary materials. The landlords also included statements and correspondence in their evidentiary materials.

The tenant testified in this hearing that he did use profanity on March 8, 2019, but he had apologized for this behaviour. Other than this single incident, the tenant disputes that he was made aware of any other incidents. The tenant testified that on March 13, 2019 he had sent an email to the landlord, which he read in the hearing. The tenant had apologized for his behaviour as he was frustrated about the washer and dryer situation, while he was also dealing with issues concerning his son. The tenant admitted his

wrongdoing. The tenant testified that the landlords had replied on March 14, 2019 and had accepted his apology, but received a caution notice about the dyer two days later.

The tenant called a witness in this hearing. LL testified that she had visited the tenant in February of 2019, during a large snowfall. LL had parked her vehicle on the street, in front of the house, in the spot where the snow had been cleared. LL testified that the tenant then received a text message that she was rude for parking there as that spot had been shoveled by another tenant, and that tenant had intended to use that spot. LL testified that the landlords had also sent a text message informing the tenant that his guests could not park there as it belonged to the other tenant. LL was confused as it was a public street, and not designated parking.

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 his application on June 6, 2019, 5 days after considered to have been deemed served with the 1 Month Notice. As the tenant filed his application within the required period, and having issued a notice to end this tenancy, the landlords have the burden of proving that they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

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 effective date of June 30, 2019, or not.

I have also considered the evidence and testimony of both parties regarding the tenant's actions, and whether the evidence provided supports whether this tenancy should end on the grounds provided on the 1 Month Notice.

The landlords 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. A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlords, to present evidence and argument supporting the proposition that the term was a material term. As noted in RTB Policy Guideline #8, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the Agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach...must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy...*

In regards to the landlords' allegations that there has been a breach of a material term of the tenancy agreement, the tenant disputes that he was informed that there was a material breach of the tenancy agreement. The tenant felt that his apology had been accepted by the landlords, and this added to the ambiguity of why he was issued a 1 Month Notice for his breach.

After considering the written and oral evidence presented, I find that the landlords have failed to demonstrate that the tenant was properly informed of his breach, nor was the tenant given a proper deadline. I accept the testimony and evidence provided by the

tenant that he was confused as he was under the impression that the landlords had accepted his apology. I find that the tenant was confused and unaware of how landlords would be ending this tenancy if he failed to take action by a certain date. On this basis, I find that the landlords have failed to meet the high standards required to end the tenancy on the basis of a breach of a material term of the tenancy agreement.

The landlords also indicated on the 1 Month Notice that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord. The landlords are correct in their testimony that they have an obligation to ensure the quiet enjoyment of their tenants as required by section 28 of the *Act*.

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

(b) freedom from unreasonable disturbance;...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the landlords have acted in a very pro-active manner by addressing issues between the tenants. I find the tenant's testimony forthright in this hearing, and he had admitted to using disrespectful language. Based on the evidence provided, I find that although the tenant's actions could be considered threatening, the tenant had taken action by apologizing for his behaviour. I find that some of the disagreements and conflict had taken place due to miscommunication and misunderstanding between the parties such as the incident involving the street parking. I am not satisfied that the behaviour of the tenant is serious and significant enough in nature to justify the termination of this tenancy.

For all the reasons cited above, I find that the landlords have 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 tenant's application for cancellation of the 1 Month Notice dated May 27, 2019. The tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

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 May 27, 2019. This tenancy is to continue as per the *Act*, regulation, and tenancy agreement.

As the tenant was successful in his application, I allow him to recover the filing fee for this application.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice dated May 27, 2019. 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: August 2, 2019

Residential Tenancy Branch