



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CIRCA VENTURES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDCL-S OPC

Introduction

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

- An order of possession pursuant to section 55;
- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlords were represented by their agent (the "landlord").

As both parties were present service of documents was confirmed. The tenant confirmed receipt of materials and that they had not served any materials. Based on the testimonies I find that the tenant was served with the materials pursuant to section 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to recover the filing fee from the tenant?

Background and Evidence

This periodic tenancy began in November, 2016. The rental unit is a detached home. The current monthly rent is \$1,850.00 payable on the first of each month. A security deposit of \$900.00 and pet damage deposit of \$200.00 were collected at the start of the tenancy and are still held by the landlord.

The landlord issued a 1 Month Notice to End Tenancy for Cause dated May 24, 2019 listing the reasons for this tenancy to end as:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- put the landlord's property at significant risk.

Tenant or person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

Tenant has not done required repairs of damage to the unit.

The landlord explained that the tenant has incurred multiple violation tickets, fines and warning letters from the local municipality for their conduct and upkeep of the rental property. The landlord submitted the fines and correspondence from the municipality into evidence. The matters raised in the municipal correspondence include keeping wrecked vehicles on the property, parking violations, noise complaints and leaving "appliances, mattresses, couch, vehicle parts, rubbish [and] litter, etc on the property making it unsightly".

The landlord submits that as a result of the tenant's actions the municipality has issued a number of fines totaling \$1,650.00. The landlord testified that these fines were issued against them as the registered owner of the property and have been paid in full to the municipality. The parties agree that the tenant has made some payments to the landlord for these losses. The landlord now seeks a monetary award in the amount of \$950.00 from the tenant, reimbursement for the outstanding amount of the fines incurred.

The tenant acknowledged that they were informed of the municipal violations but submit they took action in a reasonable timeframe. The tenant submits that they do not believe they are responsible for the full amount of the fines issued as some of the tickets pertain to vehicles not under their control. The tenant also submits that they have continued to pay the full monthly rent of \$1,850.00 and believed that the tenancy had been reinstated after the issuance of the 1 Month Notice. The parties testified that the landlord had

attempted to issue a rent increase to \$2,200.00 sometime in the summer of 2019 but that increase was not accepted.

Analysis

Section 47 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. If the tenant does not file an application to dispute the notice they are conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ends on the effective date of the 1 Month Notice.

In the present case the tenant did not file an application for dispute resolution and they are conclusively presumed to have accepted that the tenancy ends on June 30, 2019, the effective date of the notice.

Residential Tenancy Policy Guideline 11 discusses the issue of waiver of a notice to End Tenancy:

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 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.

I find that there is sufficient evidence that the conduct of the landlords amounts to an implied waiver of the Notice to End Tenancy and reinstatement of the tenancy. The parties confirmed that the tenant has made full payment of the rent since the 1 Month Notice was issued. I find that the landlord could have issued written receipts, correspondence or otherwise provided some documentation that these payments were accepted for use and occupancy only and did not reinstate the tenancy. The landlord provided no documentary evidence that the tenant was informed that they intended to proceed with an Order of Possession. I find the landlord's testimony that there were verbal warnings and conversations confirming that the tenancy was not reinstated to have little support in the materials and is not consistent with their conduct.

The parties gave evidence that the landlord attempted to issue a rent increase sometime in the summer of 2019 after the issuance of the 1 Month Notice. I find that this conduct is inconsistent with a tenancy that has ended and more in line with an ongoing tenancy.

Therefore, I find on a balance of probabilities that this ambiguity in the landlord's conduct amounts to a waiver of the landlords' right to seek an Order of Possession.

I find that the landlords waived their right to pursue an Order of Possession. I find that the landlords reinstated this tenancy by accepting full rent payments from the tenant for July, August, September and October, 2019, after the effective date of the 1 Month Notice without specifying that the payments were accepted for use and occupancy only.

Accordingly, I dismiss this portion of the landlord's application.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove

the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the landlords have established that they incurred losses of \$950.00 due to the conduct of the tenant. I accept the evidence by way of the municipal tickets which clearly indicate the amount of the fines, the dates and the address from which the violations arose. I do not find the tenant's explanation that some of the debris and wrecked vehicles found on the rental property were not their responsibility to be persuasive. A tenant with exclusive right to rental property cannot absolve themselves of responsibility by claiming they are not the registered owners of vehicles left on that same property. I find that the landlord incurred losses of \$950.00 as claimed and issue a monetary award in that amount accordingly.

As the landlord was partially successful in their application they are entitled to recover their filing fee from the tenant.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$1,050.00, allowing the landlords to recover their filing fee and losses from the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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.

The balance of the landlord's application is dismissed without leave to reapply.

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: October 21, 2019

Residential Tenancy Branch