



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC FFL CNC OLC

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- cancellation of the landlords’ 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

The tenants confirmed receipt of the landlords’ application and evidentiary materials. In accordance with sections 88 and 89 of the *Act*, I find the tenants duly served with the landlords’ application and evidence. The landlords testified that they were never served with any portion of the tenants’ application or evidentiary materials. The landlords testified that they wished to still proceed with the hearing. As the landlords were not served with the tenants’ evidentiary materials, the tenants’ written evidence was excluded for the purpose of this hearing.

The tenants confirmed receipt of the 1 Month Notice dated August 26, 2019, which was sent to the tenants by way of registered mail on the same date. In accordance with sections 88 and 90 of the *Act*, I find the tenants deemed served with the landlords’ 1 Month Notice on August 31, 2019, 5 days after mailing.

Issues

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords 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 landlords entitled to recover the filing fee for their application?

Background and Evidence

This month-to-month tenancy began on October 1, 2017, with monthly rent currently set at \$1,200.00 per month, payable on the first of each month. The landlords currently hold a security deposit of \$600.00. The tenants continue to reside in the rental suite.

The landlords issued the notice to end tenancy providing five grounds:

1. The tenants have allowed an unreasonable number of occupants in a rental unit;
2. The tenants are repeatedly late paying rent;
3. The tenants or a person permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlords;
4. The tenants or a person permitted on the property by the tenants have seriously jeopardized the health or safety or lawful right of another occupant or the landlords;
5. The tenants or a person permitted on the property by the tenants have put the landlord's property at significant risk.

The landlords provided the following reasons for why they are seeking an Order of Possession on the grounds provided on the 1 Month Notice. The landlords testified that the tenants have been repeatedly late in paying their rent. The landlords provided a record of the late payments, accompanied by the tenants' text messages. The landlords testified that they had never given oral or written permission for the tenants to pay their rent late, and wish to end the tenancy on these grounds. The tenants responded that although they had paid the rent late due to unfortunate circumstances, the landlords had always allowed them to do so. The tenants testified that they had been paying their rent late since the beginning of this tenancy, but the landlords never communicated to them that this would mean the end of their tenancy until they were issued the 1 Month Notice.

The landlords are also seeking the end of this tenancy as the third tenant, TP, was not authorized to live there. The landlords testified that in April of 2019 they were informed by a neighbour that the tenant CP's father, TP, was residing at the rental unit. The tenants responded that this was a temporary arrangement as TP was awaiting for renovations to be completed. The landlords testified that TP remained there, and is still residing at the rental unit, and is even listed in the tenants' application as a tenant despite the fact that the landlords had never given permission for TP to reside there. The tenants do not dispute that TP has been residing in the rental unit. The tenants testified that the rental unit has three bedrooms, and 2 bathrooms, and a couple and a third person is not an unreasonable number of occupants considering the size of the rental unit. The tenants testified that tenants reside upstairs, and the landlords have no issue with the number of occupants upstairs.

The landlords also feel that the tenants have put the landlords' property at risk. The landlords testified that the tenants' use of an electrical cord and wiring in an unsafe manner has put his property at risk. The landlord JW testified that he was an electrical engineer, and that he knew that the use of the cord and wiring was not up to code, and that it posed a fire hazard.

The landlords also expressed concern that the tenants had changed the locks without their permission, and did not provide them with keys to the new locks. The tenants admit that they had changed the locks, but only because the lock was broken. The tenants testified that they had provided copies to the other tenants, and that they were unaware of that they were required to provide the landlords with a copy.

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 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. As the tenants filed her 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.

The tenants do not dispute that rent payments were made late on several occasions since the beginning of this tenancy, but testified that the landlords never had an issue with the late payments.

The landlords dispute ever giving the tenants permission to make late rent payments. The landlords included a series of text message communication between the parties which the landlords feel support that the tenants repeatedly paid their rent late, despite the fact that they had never given the tenants oral or written permission to do so.

Residential Tenancy Policy Guideline #11 states the following about express and implied waivers:

“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.”

As noted above, a notice to end tenancy must be clear, unambiguous and unconditional. This extends to the terms of a tenancy, including how and when payments must be made. Accepting late rent payments on multiple occasions could possibly imply the landlord's consent to these late rent payments.

I find that the tenants have been repeatedly late paying rent during this tenancy, as supported by the landlords' evidence. Despite the tenants' repeated late rent payments, requests and explanations, I find the landlords failed to provide sufficient evidence to show that they had clearly communicated to the tenants that the late rent payments were not acceptable. I find the ongoing acceptance of the tenants' late rent payments combined with the lack of communication to the tenants that they may not pay their rent late shows an implied waiver. I therefore dismiss the landlords' application to end the tenancy on the grounds of repeated late rent payments.

The landlords are also seeking an end of this tenancy on the grounds that the tenants have allowed an unreasonable number of occupants in the rental unit. Although the landlords may have established that the tenants had breached the terms of this tenancy by allowing an unauthorized tenant to reside in the rental unit, I am not satisfied that this

additional occupant constitutes an unreasonable number of occupants. I find that the tenants had established that the rental unit could easily accommodate the three parties. I am not satisfied that the landlords' had provided sufficient evidence to show how these tenants have significantly interfered with, or disturbed others. As section 47 of the *Act* only allows a landlord to end a tenancy on the grounds provided on the 1 Month Notice. As I am not satisfied that the landlords had provided sufficient evidence support that there are an unreasonable number of occupants in the rental unit or how the tenants had significantly interfered with or disturbed others, I dismiss the landlords' application to end the tenancy on these grounds.

It was also undisputed by the tenants that they had changed the locks, and used an extension cord without the landlords' permission. The landlords expressed concern that the tenants have adjusted the wiring in the home which is not up to code, and poses a significant risk to the landlords' home. The landlords testified that this observation is a valid one considering the educational and professional background of the landlords. Although the tenants' behaviour could possibly constitute a breach of the *Act* and tenancy agreement, I am not satisfied that landlords had provided sufficient evidence to show how the tenants' actions have put the landlords' property at significant risk. Accordingly, I dismiss the landlords' application to end this tenancy on these grounds.

For the reasons cited above, I find that the landlords have failed to demonstrate to the extent required that this tenancy should end on the grounds provided on the 1 Month Notice, and accordingly I am allowing the tenants' application for cancellation of the 1 Month Notice dated August 26, 2019. The tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

The tenants applied for an order for the landlords to comply with the *Act*. I am not satisfied that the tenants had provided sufficient evidence to support how the landlords have failed to comply with the *Act*, and accordingly this portion of their application is dismissed without leave to reapply.

As the landlords were not successful with this application, their application to recover the filing fee is also dismissed without leave to reapply.

Conclusion

I allow the tenants' application to cancel the 1 Month Notice dated August 26, 2019. The 1 Month Notice of is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The remaining portions of both applications are 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 30, 2019

Residential Tenancy Branch