



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING ADVISORY
ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL, FFL (Landlord's Application)
CNR, CNC, OLC, LRE (Tenants' Application)

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application filed on August 12, 2020 they sought an Order of Possession and monetary compensation from the Tenants based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on March 11, 2020 (the "March Notice") as well as recovery of the filing fee.

In the Tenants' Application, filed on August 19, 2020, the Tenants sought the following relief:

- to cancel the March Notice;
- to cancel a 1 Month Notice to End Tenancy for Cause;
- an Order restricting the Landlord's right to enter the rental unit; and,
- an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement.

The hearing of the parties' cross applications was scheduled for teleconference at 9:30 a.m. on September 29, 2020. Both Tenants called into the hearing and the Landlord was represented by C.A., the Tenant Services Coordinator. All in attendance were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties'

respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Issues to be Decided

The Tenants confirmed that the request to cancel a notice to end for cause was made in error as no such notice had been served. I therefore amend the Tenant's application to remove this request.

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Branch Rules of Procedure*. At all times an Arbitrator is guided by *Rule 1.1* which provides that Arbitrators must ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the Notice. I also find that this claim is not sufficiently related to the Tenants' claim for orders restricting the Landlord's right to enter the rental unit or to comply with the legislation; similarly, I find that the validity of the Notice is also not sufficient related to the Landlord's monetary claim; accordingly I exercise my discretion and dismiss those claims with leave to reapply.

Issues to be Decided

1. Should the March Notice be cancelled?
2. If not, is the Landlord entitled to an Order of Possession based on the March Notice?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenants applied for dispute resolution and are the Applicants, the Landlord Representative, C.A., presented the Landlords' evidence first.

A copy of the residential tenancy agreement was provided in evidence and which confirmed the start date of the tenancy as March 1, 2020. C.A. confirmed that the Tenants moved into the rental unit February 18, 2020. Monthly rent is \$1,281.00. Although the agreement provided that the Tenants were to pay a security deposit of \$640.50, C.A. stated that the Tenants failed to pay the security deposit. She confirmed that as of July 2020 the pet damage deposit of \$367.00 was paid.

C.A. stated that the Tenants failed to pay their rent for March 1, 2020 at which time the Landlord issued the March Notice. The Proof of Service filed in evidence confirmed that the March Notice was served on the Tenants by posting to the rental unit door on March 11, 2020.

C.A. testified that the Landlord rescinded the March Notice on March 23, 2020. A copy of the letter to the Tenants confirming this was also provided in evidence before me.

C.A. further testified that the Landlord continued to accept rent from the Tenants following the issuance of the March Notice and did not issue receipts for use and occupancy only, until the September 2020 rent payment was received.

C.A. confirmed that the Tenants paid their April rent on April 15, 2020. She stated that she did not receive a payment for the April 2020 rent such that each month the Tenants have been behind a month in their rent payments.

C.A. testified that they issued another 10 Day Notice on July 30, 2020 (the "July Notice"). She confirmed that following issuance of the July Notice the Landlord also accepted the August rent payment without issuing a receipt for use and occupancy only.

The Tenant ledger provided in evidence indicated that the sum of \$2,108.50 was outstanding as of August 6, 2020. C.A. testified that the Tenants made further payments such that the sum of \$727.50 was outstanding as of September 9, 2020.

C.A. stated that the Ministry has made a partial payment towards the October rent which must be applied to October, and not to any arrears.

In response to the Landlord's claims the Tenant, C.J. testified as follows. He confirmed they moved into the rental property on February 18, 2020. He further confirmed that rent is payable in the amount of \$1,281.00 per month. He stated that he pays his rent through electronic transfer. He stated that recently the Ministry has been paying the Landlord directly for the other Tenant, K.J.'s portion of her rent.

The Tenant stated that he paid the March 2020 rent on April 14, 2020. He confirmed that it was the Tenants' understanding that the March Notice was rescinded by the Landlord.

The Tenant confirmed that they did not pay the April 2020 rent on time. He claimed that C.A.'s boss, S.M., agreed that the Tenants would pay the outstanding April rent in payments, however as of the date of the hearing the Landlord had not proposed a repayment plan for this rent. The Tenant confirmed that although a formal repayment plan had yet to be agreed upon, they have been making extra payments to try to deal with any outstanding amount. He stated that he has been paying an extra \$100.00 per month as well as any further amounts they can afford. He noted that payments were made in September and confirmed that \$727.50 is outstanding as of the date of the hearing. He stated that he hoped to pay this amount off in full within a week of the hearing.

In reply, C.A. stated that when the March Notice was issued it was before the Provincial declaration of a state of emergency. She confirmed the July Notice was issued during the prohibition on evictions. She noted that this was a very confusing time for landlords as the rules seemed to change daily.

C.A. also testified that on April 9, 2020 the Tenants were offered an opportunity for a payment plan for the outstanding rent. C.A. did not include this letter in the Landlord's evidence but claimed that the Tenants had the opportunity to sign and return the payment plan and failed to do so.

C.A. confirmed that the Tenants have been paying extra amounts towards the arrears.

Analysis

After consideration of the evidence and testimony before me, the submissions made, and on a balance of probabilities I find as follows.

On the Application for Dispute Resolution the Landlord indicated they sought an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on March 11, 2020.

The parties agree that by letter dated March 23, 2020 the Landlord communicated to the Tenants that they wished to rescind the March 11, 2020 Notice.

While a landlord cannot unilaterally withdraw a notice to end tenancy, I find the parties in this case agreed to continue with the tenancy after the issuance of the March Notice. In particular, I find that the landlord and tenant, by their actions, agreed to waive the Landlord's right to end this tenancy for unpaid rent in March of 2020.

Guidance can be found in *Residential Tenancy Branch Policy Guideline 11- Amendment and Withdrawal of a Notice to End Tenancy* which provides as follows:

D. WAIVER OF NOTICE AND NEW OR CONTINUED TENANCY

Express waiver happens when a landlord and tenant explicitly agree to waive a right or claim. With express waiver, the intent of the parties is clear and unequivocal. For example, the landlord and tenant agree in writing that the notice is waived and the tenancy will be continued.

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant.

For example, if a landlord gives a notice to end tenancy, a landlord may accept rent from the tenant for the period up to the effective date of the notice to end tenancy without waiving the notice. However, if the landlord continues accepting rent for the period after the effective date but fails to issue rent receipts indicating the rent is for "use and occupancy only," it could be implied that the landlord and tenant intend for the tenancy to continue.

Intent may also be established by evidence as to:

- whether the landlord specifically informed the tenant that the money would be for use and occupancy only;

- whether the landlord has withdrawn their application for dispute resolution to enforce the notice to end tenancy or has cancelled the dispute resolution hearing; and
- the conduct of the parties.

The evidence before me confirms that the Landlord continued to accept rent from the Tenants following the issuance of the March Notice and did not issue receipts for “use and occupancy only” until September 2020. In accepting rent in this manner, I find the Landlord reinstated this tenancy. I also find the Landlord communicated with the Tenants about a repayment plan, and in fact accepted additional payments from the Tenants for arrears, such that the Landlord implied their agreement that the tenancy was to continue.

For these reasons, I find the Landlord is not entitled to an Order of Possession based on the March 2020 Notice. I therefore grant the Tenant's request to cancel the Notice.

While the Landlord did not expressly request an Order of Possession based on the July Notice I note the following. The Landlord issued a further 10 Day Notice to End Tenancy on July 30, 2020; at that time, during the COVID-19 State of Emergency, a landlord was prohibited from issuing a notice to end tenancy for unpaid rent. As such, the July Notice is also invalid. Further, I note that even in the event the Landlord was able to issue a notice to end tenancy for unpaid rent in July, in this case, the Landlord issued the July Notice and they again accepted the August rent without issuing a receipt for use and occupancy such that they reinstated the tenancy.

The Tenants indicated they would pay any outstanding arrears within a week of the hearing. Should they fail to do so, the parties are reminded to consider *Residential Tenancy Branch Policy Guideline 52--COVID-19: Repayment Plans and Related Measures*.

Conclusion

The Landlord's request for an Order of Possession based on the March Notice is dismissed.

The Tenant's request for an Order canceling the March Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

The balance of the parties' claims are dismissed with 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 7, 2020

Residential Tenancy Branch