



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One Month Notice to End Tenancy for Cause(the “Notice”).

This matter commenced on October 23, 2020 and was adjourned to November 19, 2020, due to evidence issues. The interim decision should be read in conjunction with this decision.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Issue to be Decided

Should the tenancy end?

Background and Evidence

The tenancy began on June 1, 2017. Rent in the amount of \$2,700.00 was payable on the first of each month. A security deposit of \$1,350.00 was paid by the tenant.

In the tenant’s written application, they stated that the notice to end tenancy is not valid because the tenant vacated the premise in November 2019 and that the landlord created a new tenancy with the occupant. Therefore, I find the only issue for me to determine is whether or no the tenant has legally ended their obligation under the Act.

The tenant testified that between the months of August 2019 and December 2019, they were going back and forth to the rental unit as they were going through a difficult time with their relationship with KO, who was an occupant. The tenant stated that it was in December 2019, that they had finally left the premise.

The tenant testified that they did not give the landlord any notice they were vacating until they had a conversation about repairs with the landlord in August 2020, that they informed the landlord that they had vacated.

The tenant testified that they assumed that KO and the landlord would come to their own rental agreement after they had vacated.

The witness KO testified that they were not a tenant on the tenancy agreement. KO stated they knew they were not the tenant as they did not want that responsibility at the time the tenancy agreement was made.

The witness KO testified that they informed the landlord that the tenant had vacated. KO stated that the landlord was fine with that and accepted rent. KO stated that they do not know if the tenant ever ended the tenancy with the landlord. KO stated that they never were acting as an agent for the tenant and had no authority to end the tenancy.

The advocate argued that the tenant vacated the premise in December 2019, and the landlord has been accepting rent from KO and by the landlord's conduct this created a new tenancy with KO.

The landlord testified that they never entered into any tenancy agreement with KO. The landlord stated that they could not legally do so, because the tenant did not end their tenancy. The landlord stated that all they originally wanted was for the tenant to give notice to end the tenancy then they could discuss entering into a new agreement with the occupant. The landlord states that they are no longer open to considering KO as a tenant due to recent problems.

The tenant responded they did not give notice to the landlord because they were fearful.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(4) A notice to end a tenancy given under this section **must comply with section 52** *[form and content of notice to end tenancy]*.

I have also reviewed the Residential Tenancy Policy Guideline 13, Rights and Responsibilities of Co-Tenants, for some guidance on this issue, although I recognized this guideline was created for co-tenants, and not for a tenant and an occupant relationship, which is the case before me. However, I find the tenant's obligation remain the same.

In this case, the tenant and KO were in a relationship. KO was not a tenant under the tenancy agreement as KO did not want the responsibility of a tenant at that time. I accept the relationship between the parties may have ended and the tenant vacated leaving, KO the occupant behind. Simply by vacating, does not release the tenant from their obligation, regardless of whether or not they reside in the unit. The tenant listed in the tenancy agreement must give the landlord written notice to end their tenancy.

I find it was unreasonable for the tenant to assume KO and the landlord would work out their own tenancy agreement. The landlord cannot simply enter into a new tenancy agreement with the remaining occupant KO, until the current tenancy has legally ended, which it was never done.

While I accept KO, the occupant, was paying rent to the landlord. I find the landlord was entitled to receive rent; however, there was an existing tenancy agreement in effect, any rent received is on behalf of the named tenant. It would only be after the

tenant had legally ended their tenancy and if rent was accepted after the effective vacancy date, that a tenancy may have been created between the occupant and the landlord. That is not the circumstances before me as the tenant never gave notice to the landlord to end their tenancy.

Further, in August 2020, the tenant was asking the landlord to complete repairs. This contradicts that the tenant ended their tenancy in December 2019, and support the tenant was still exercising their rights under the Act. This is eight months after they alleged they ceased being a tenant. This is not reasonable.

Based on the above, I find the tenant had not given the landlord the required notice to end the tenancy and the landlord was entitled to serve the tenant with the Notice. However, as the tenant has vacated the premise, I find it not necessary to consider the merits of the Notice, as by the tenant's own evidence they are no longer a tenant. Therefore, I find it appropriate to end the tenancy, pursuant to section 44(1)(f) and 62 of the Act.

At the conclusion of the hearing, after the parties were notified that I would be ending the tenancy. The parties agreed to the following:

1. The parties agreed that the tenancy will end on **January 31, 2021** under the current tenancy this is solely for the benefit for the tenant's occupant to find alternative living accommodations;
2. The parties agreed that rent for December 2020 and January 2021, must be paid within three days of rent being due. Should rent not be paid within this timeframe that the landlord is entitled to a two-day order of possession;
3. The parties further agreed that should the occupant find alternative housing, that the landlord agrees to waive their rights to a least 30 days notice to end the tenancy earlier if the tenant give the following notice: If notice to end the tenancy is given in November 2020, the landlord will accept 10 days notice to end the tenancy. If notice to end the tenancy is give in December 2020 or January 2021, the landlord will accept 15 days notice;
4. The parties agreed that the tenant is still using the rental address for service, the landlord is entitled post any documents to the door until such time that the tenancy ends. The landlord further agreed that they will provide the tenant's advocate a curtesy copy of any such documents by email.

This settlement agreement was reached in accordance with section 63 of the *Residential Tenancy Act*.

Conclusion

The tenant did not end their tenancy in accordance with the Act. I grant the landlord two orders of possession for the dates listed in the settlement portion of the decision.

As a result of the above settlement, the tenant/landlord is granted an order of possession and a monetary order, should the tenant/landlord fail to comply with the settlement agreement.

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: November 20, 2020

Residential Tenancy Branch