



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNC

Introduction

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

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 11:11 a.m. to enable the landlord to participate in this scheduled hearing for 11:00 a.m.. During the hearing, I confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses

The tenant provided sworn, undisputed testimony that they had personally served the landlord with their application for dispute resolution hearing package ("Application") and evidence on October 19, 2021. In accordance with sections 88 and 90 of the *Act*, I find the landlord duly served with the tenant's Application and evidence. The landlord did not submit any evidence for this hearing.

The tenant confirmed receipt of the 1 Month Notice dated June 21, 2021. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

Preliminary Issue—Tenant's Application for an Extension of Time to File their Application for Dispute Resolution

The tenant filed their application for dispute on July 14, 2021, although the 1 Month Notice was personally served to the tenant on June 22, 2021. The tenant testified that

they were unaware of the time limit to file an application. The tenant has the right to dispute the Notice within 10 days after receiving it, unless the arbitrator extends that time according to Section 66 of the *Act*.

Section 66 (1) of the *Act* reads:

The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).

Normally if the tenant does not file an Application within 10 days, they are presumed to have accepted the Notice, and must vacate the rental unit. Section 66 (1) allows me to extend the time limit established by the *Act* only in exceptional circumstances.

RTB Policy Guideline #36 clarifies the meaning of “exceptional circumstances” as “*the reason for failing to do something at the time required is very strong and compelling...Some examples of what might not be considered ‘exceptional’ circumstances include...the party did not know the applicable law or procedure*”.

On the basis of the Section 66(1) of the *Act*, and the definition provided by Policy Guideline #36, I find that the tenant has not met the burden of proof to justify that there is an exceptional reason for the late filing of their application. Under these circumstances, I am not allowing their application for more time to make their application.

Issues to be Decided

Should the landlord’s 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This month-to month tenancy began on June 14, 2014, with monthly rent currently set at \$1,350.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$600.00, which the landlord still holds.

The tenant was served with a 1 Month Notice to End Tenancy for Cause on June 22, 2021, for an effective date of July 31, 2021. The tenant disputes the reasons provided by the landlord for why they were ending the tenancy.

The tenant testified that the landlord wanted to end the tenancy in order to perform renovations in order to sell the home. The tenant testified that the home has been listed

for sale for approximately six months, and the landlord has made false claims that the tenant has refused or denied access to allow showings for the home.

The tenant testified that the rent for the tenancy has been paid, and the landlord has not indicated that any payments were for use and occupancy only.

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. The tenant did not file for dispute resolution until 22 days later. I find that the tenant failed to file their application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, the tenant's application to cancel the 1 Month Notice is dismissed without leave to apply.

Section 55(1) of the *Act* reads as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

A copy of the 1 Month Notice was submitted by the tenant for this hearing. Section 52 of the *Act* states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Section 47(1) of the *Act* allows a landlord to end a tenancy for cause for any of the reasons cited in the landlord's 1 Month Notice. Although the landlord provided reasons on the 1 Month Notice for why they were seeking the end of this tenancy, the tenant's testimony is that the landlord wanted to end the tenancy in order to renovate the home

before selling the home. In light of the evidence before me, I am not satisfied that the landlord's 1 Month Notice is valid.

Pursuant to section 49.2(1) of the Act, the landlord may make an application for dispute resolution requesting an order ending a tenancy, and an order granting the landlord possession of the rental unit, if all of the following apply:

- (a) the landlord intends in good faith to renovate or repair the rental unit and has all the necessary permits and approvals required by law to carry out the renovations or repairs;
- (b) the renovations or repairs require the rental unit to be vacant;
- (c) the renovations or repairs are necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located;
- (d) the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

Section 47(1) of the *Act* does not allow a landlord to end a tenancy for the purposes of renovations, or in order to sell a home. I am not satisfied that the landlord had served the tenant with a Notice to End Tenancy in the approved form. I find that the 1 Month Notice does not comply with section 52(e) of the *Act*.

Furthermore, the tenant's testimony is that the landlord has continued to accept rent payments from the tenant without informing the tenant that the payments were for use and occupancy only.

It was undisputed by both parties that the tenants had made rent payment on June 19, 2017, after the effective date of the 10 Day Notice. I find that the tenants had provided sufficient evidence to support that payments were made after the 10 Day Notice was issued to them. It was undisputed that the landlord had accepted payments on June 19, 2017 and July 6, 2017, and did not indicate to the tenants that these payments were 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 rent payment after the effective date of the 1 Month Notice, and without indicating that these payments were for use and occupancy only, I find that the landlord had implied that that this tenancy was reinstated.

As noted above, the notice to end tenancy must be clear, unambiguous and unconditional. By accepting rent payments after the effective date of the Notice without informing the tenant that these payments were for use and occupancy only, the Notice became ambiguous as whether this tenancy had ended on the effective date of July 31, 2021, or not. Accordingly, I find that the landlord had implied that the tenancy was reinstated, and the 1 Month Notice is of no force or effect. This tenancy is to continue until ended in accordance with the Act, regulation, and tenancy agreement.

Conclusion

The tenant's application for more time to file their application as well as their application to cancel the 1 Month Notice are dismissed.

I find that the 1 Month Notice is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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 15, 2021

Residential Tenancy Branch