



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was convened by way of conference call. The Landlord filed an Application for Dispute Resolution May 31, 2022 (the “Application”). The Landlord applied for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated April 30, 2022 (the “Notice”). The Landlord also sought to recover the filing fee.

D.S. appeared at the hearing for the Landlord. The Tenant appeared at the hearing with T.H., their legal advocate. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenant and T.H. confirmed the Tenant received the hearing package and Landlord’s evidence. T.H. raised an issue with timing of service; however, the Tenant and T.H. confirmed they were prepared to deal with the Application today and therefore I did not go into this further.

D.S. confirmed receipt of the Tenant’s evidence and confirmed there were no service issues.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate.

At the start of the hearing, D.S. confirmed the Landlord is seeking an Order of Possession based on the Notice.

During the hearing, the Tenant referred to a discussion they had with D.S. the week prior to the hearing about the Notice and continuing the tenancy. The Tenant testified that D.S. told the Tenant the Landlord would not pursue eviction due to the Tenant's personal circumstances and efforts they have made to address the issues which led to the Notice.

D.S. testified that they spoke to the Tenant last Friday and told the Tenant that, after reviewing their evidence, if the Landlord obtains an Order of Possession based on the Notice, the Landlord will not enforce it unless the Tenant causes further issues.

D.S. confirmed that, even if the Landlord is issued an Order of Possession based on the Notice, the Landlord does not intend to enforce it based on past incidents. D.S. said the Landlord will only enforce the Order of Possession if there are further incidents in which case it will be enforced in part based on past incidents and in part based on possible future incidents. D.S. confirmed the Landlord is not seeking to end this tenancy based on the past incidents the Notice was issued for.

In reply, T.H. submitted that the conversation between the Tenant and D.S. was a settlement between the parties.

Analysis

The Notice was issued pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

RTB Policy Guideline 11 deals with withdrawal of notices to end tenancy and states:

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.

I accept that the Tenant and D.S. discussed the tenancy and Notice the week prior to the hearing and D.S. told the Tenant the Landlord will not enforce an Order of Possession issued based on the Notice unless further issues arise. I find D.S. waived or withdrew the Notice because D.S. made it clear that the Landlord is not seeking to

uphold the Notice and reasons for it as a basis to end the tenancy. It was reasonable for the Tenant to understand that the tenancy will continue despite the Notice because D.S. outright told the Tenant this.

As told to D.S. at the hearing, the Landlord should not seek an Order of Possession based on the Notice if the Landlord does not intend to end this tenancy based on the Notice. It is clear the Landlord is seeking an Order of Possession based on the Notice in case the Tenant causes further issues in the future which is not an appropriate use of section 47 or this process. Obtaining an Order of Possession based on the Notice to hold over the Tenant's head in case the Tenant does something further in the future is not appropriate and not in accordance with the spirit of the *Act*. If the Tenant causes issues in the future, the correct process is to issue a new One Month Notice pursuant to section 47 of the *Act* and seek to enforce it. The Tenant has a right to be issued a One Month Notice if they cause issues outlined in section 47 of the *Act*, has the right to dispute any One Month Notice that is issued and has a right to one month's notice versus immediate eviction. In my view, the Landlord is attempting to circumvent the process set out in the *Act* for ending a tenancy for cause by seeking an Order of Possession based on the Notice when the Landlord has no intention of enforcing the Order of Possession unless the Tenant causes further issues.

Given the above, I find D.S. waived or withdrew the Notice and therefore the Landlord is not entitled to an Order of Possession based on it. The request for an Order of Possession is dismissed without leave to re-apply.

Given the Landlord has not been successful in the Application, they are not entitled to recover the filing fee.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 11, 2022

Residential Tenancy Branch