



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNE, OLC

Introduction and Preliminary Matters

On February 2, 2023, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for End of Employment pursuant to Section 48 of the *Residential Tenancy Act* (the “Act”); however, it was evident that this type of notice was never served, and the Tenant intended to dispute a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Act*. In addition, the Tenant was seeking an Order to comply pursuant to Section 62 of the *Act*.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing and evidence package to the Landlord’s home address, by registered mail, but he was unsure of when he did this. As well, he indicated that he also served this package by registered mail to the address that the Landlord does business at, on this same date. He stated that these packages were returned to sender. However, he did not have any proof of service to corroborate any of this testimony.

The Landlord advised that he was out of the country, so he did not receive these packages. However, he testified that he received this package by email on March 9, 2023, and that he was prepared to proceed. Given the testimony provided, I am satisfied that the Tenant's Notice of Hearing package was deemed received five days after it was mailed out. Furthermore, as the Landlord was prepared to proceed based on service of the emailed package, I am satisfied that the Landlord was sufficiently served the Tenant's Notice of Hearing and evidence package. As such, I have accepted the Tenant's evidence and will consider it when rendering a Decision.

The Landlord advised that he served his evidence to the Tenant via email on May 19, 2023, but he did not have written consent to exchange documents by email. The Tenant confirmed that he received this package and that he did not have any position with respect to the manner with which it was served. As such, I have accepted the Landlord's evidence and will consider it when rendering a Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

As another note, at the end of the hearing, the Tenant agreed to withdraw the Application to dispute the Notice as the tenancy had ended. As well, the Landlord had no opposition to this.

I find that the Tenant's request to withdraw the Application in full appears not to prejudice the Landlord. Therefore, the Tenant's request to withdraw the Application in full was granted. I note that this Decision does not extend any applicable timelines under the *Act*.

Despite this Application being withdrawn, I find it necessary to document relevant testimony throughout the hearing regarding the circumstances pertaining to the manner

with which the tenancy ended.

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that his wife, the co-owner, started this tenancy as a favour to the Tenant, and he confirmed that this was an unwritten, month-to-month tenancy because money was exchanged prior to the parties formalizing the tenancy in writing. He acknowledged that this tenancy started on April 15, 2022, that rent was due in the amount of \$2,000.00 per month, and that it was due on the first of each month. As well, he stated that a security deposit was not paid. The Tenant agreed about the details of the tenancy. However, there was a dispute regarding how this tenancy actually ended.

The Landlord advised that the Notice was served by being attached to the Tenant's door on January 30, 2023. The Tenant clearly received the Notice as he confirmed that he received it on January 31, 2023, and he disputed it within the legislated timeframe. The reasons the Landlord served the Notice are because the "Tenant or a person permitted on the property by the Tenant has put the landlord's property at significant risk" and because the "Tenant has not done the required repairs of damage to the unit/site/property/park." The effective end date of the tenancy was noted on the Notice as February 28, 2023.

There were deficiencies on the Notice that were discussed with the Landlord. Furthermore, when he was asked why the Notice was served, his first submission was that it was due to the property selling, and the purchaser not wanting the Tenant. He was informed that it is clearly evident by the reasons listed on this Notice that this was not a valid reason to serve this particular Notice. It was apparent from the Landlord's responses and demeanour that he knew little of his rights or obligations as a Landlord under the *Act*.

For some reason, despite earlier confirming that rent was paid in the amount of \$2,000.00 per month, the Landlord then claimed that he did not know if rent was paid at all as it was his wife that collected the rent. It is not clear the purpose for which the Landlord started to suggest that rent was possibly not paid, and it was relayed to him

that if this was in fact the case, then it was possible that the *Act* may not have jurisdiction over this matter. As such, he was asked to clarify this sudden and curious change in position of rent not being paid. As well, he was informed that if rent was not paid, and a tenancy was not entered into, then it would not make sense why he would have then served the Notice.

The Landlord asked if he should call his wife to enter the hearing to testify about whether or not rent was paid, and he was informed that if he did not know about rent and wanted specific testimony about it, then he should have his wife call in. However, he did not contact her to participate, for whatever unknown reason. Again, it was not readily evident why the Landlord elected to change his testimony that rent was never paid by the Tenant. As too much of the hearing time had been wasted in attempting to understand the logic behind this change in testimony, and as it was clearly evident that a tenancy had been engaged in, I elected to move past this divergent, contradictory, unusual, and bizarre testimony.

Furthermore, as it had appeared as if the tenancy may have already ended, the focus of the hearing turned to taking submissions regarding this aspect instead, as this may have rendered consideration of the validity of the Notice to be moot.

The Tenant advised that there was an altercation with the Landlord on April 3, 2023, where the police informed him that it was advisable to leave the premises. He testified that he took his essential, critical documents from the rental unit, but he would still go back and forth, from the rental unit to another property, between April 3 to 13, 2023. He stated that he left the remainder of his property in the rental unit, and that he paid rent for March and April 2023. He advised that the Landlord changed the access code to the front door lock of the rental unit on April 13, 2023, and prevented him from accessing the rental unit from that point onwards. As well, he testified that the Landlord gathered his personal belongings and stored them on the balcony of the rental unit after this date. He stated that he never provided the Landlord with any written notification that he would be abandoning the rental unit at any time.

The Landlord advised that he arrived back in Canada from April 3 to 16, 2023, and that the Tenant told him via text that he would be vacating the rental unit on April 1, 2023. He testified that he hired a locksmith to change the access code to the rental unit door on April 12, 2023, and that this was done because the Tenant requested months ago that a repair be made to the lock. When he was asked if he ever provided the new access code to the Tenant, he stated that he did not because the Tenant did not ask for

it, and he had no way of providing this code to the Tenant. As well, he stated that based on the Tenant's text, and pictures that he submitted as documentary evidence, he determined that the Tenant abandoned the rental unit. Consequently, he confirmed that he packed up the Tenant's property and personal belongings.

When reviewing circumstances surrounding the end of this tenancy, I find it important to note that Section 24 of the *Residential Tenancy Regulations* (the "*Regulations*") below outlines when a determination of abandonment may be made:

Abandonment of personal property

24 (1) *A landlord may consider that a tenant has abandoned personal property if*

(a) the tenant leaves the personal property on residential property that the tenant has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which the tenant has not paid rent, or

(ii) from which the tenant has removed substantially all of the tenant's personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph

(1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

Given that the Landlord served the Notice, which was then subsequently disputed by the Tenant, the terms of the tenancy would have remained status quo until a determination was made by an Arbitrator with respect to whether or not the tenancy was over based on the validity of the Notice. Section 57 of the *Act* prohibits the Landlord from taking possession of the rental unit without first obtaining an Order of Possession from the Residential Tenancy Branch, and then enforcing that as a Writ of Possession from the Supreme Court.

While the Landlord claimed that the Tenant abandoned the rental unit, I note that the Landlord acknowledged that rent was accepted for April 2023. I find it important to emphasize that this confirmation of the acceptance of rent was in direct contradiction to his previous departure earlier about whether or not rent was ever paid. Again, it is not clear why he elected to suggest that rent was never paid; however, based on his combative and belligerent demeanour during the hearing, it was apparent that this was likely the Landlord's general disposition and natural, antagonistic character. Regardless, these contrary submissions did nothing other than to reveal this typical, unproductive tendency, and it causes me to doubt the reliability of his submissions on the whole.

Regardless, as rent was paid for the month of April 2023, I do not accept that this would satisfy the requirements of Section 24 of the *Regulations* regarding abandonment. Moreover, while the Landlord referenced pictures to support his claim that the Tenant moved out of the rental unit, when I review these pictures, I do not find these to be consistent with a conclusion of abandonment, as there was still much personal property in the closet and cabinets, and there were dirty dishes left in the sink. In my view, these clearly demonstrate that a person was obviously still residing there.

In addition, given that rent was paid for the month and that he changed the access code on or around April 12, 2023, it is unclear to me why he did not provide the new access code to the Tenant. I find it important to note that the Landlord was afforded multiple opportunities to explain why he did not give this new code to the Tenant, and I found the answers he provided were deliberately vague and were an attempt to be intentionally evasive. In my view, it makes little logical sense that when a Landlord changes a lock to a rental unit during a tenancy, that the Landlord would not sensibly realize that it was necessary to provide access to the Tenant. Given that there was clear text communication between the Tenant and the Landlord, the Landlord could have easily provided this to the Tenant. Based on the dubious nature of the Landlord's contradictory, inconsistent, evasive, and illogical testimony, I am satisfied that the

Landlord, more likely than not, changed the locks and purposefully did not provide access to the Tenant.

With respect to the Landlord's overall combative and confrontational demeanour during the hearing, which required him being cautioned and then subsequently muted due to his conduct, I find it important to reference the following excerpts that the Landlord included in his documentary evidence. These appear to be text message exchanges with possibly the Landlord's realtor, based on the name of the file that was uploaded. In this exchange, it appears as if the realtor provides a gentle caution to the Landlord about the method with which this tenancy is being managed. However, the Landlord is immediately defensive and elects to respond in a manner which can best be described as antagonistic, at the very least. I find this important to highlight as it is entirely consistent with how the Landlord presented during the hearing. Clearly, it was evident that the Landlord had little knowledge of his rights and responsibilities as a Landlord under the *Act*, and chose to manage this tenancy in a manner that befitted him, and how he believed was appropriate. Based on all the doubts created by the Landlord's questionable testimony above, I find it more likely than not that the Landlord ended this tenancy improperly as there were clearly no grounds to determine reasonably that the rental unit was abandoned.



The Landlord is cautioned about managing the rental unit, and other properties, in a manner that attempts to circumvent the *Act*. He is warned that the Compliance and Enforcement Unit of the Residential Tenancy Branch is responsible for administrative penalties that may be levied under the *Act*. This unit has the sole authority to determine

whether to proceed with a further investigation into repeated matters of contraventions of the *Act*, and the sole authority to determine whether administrative penalties are warranted in certain circumstances.

Conclusion

The Tenant has withdrawn his Application in full. I have not made any findings of fact or law with respect to the Application regarding the validity of the One Month Notice to End Tenancy for Cause dated January 30, 2023.

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: June 7, 2023

Residential Tenancy Branch