



## **Dispute Resolution Services**

Residential Tenancy Branch  
Ministry of Housing and Social Development

### **Decision**

#### **Dispute Codes:**

OPC

#### **Introduction**

This Application for Dispute Resolution by the landlord indicated that the landlord was seeking an Order of Possession based on a One-Month Notice to End Tenancy for Cause.

Both parties appeared and each gave testimony in turn.

#### **Issue(s) to be Decided**

The landlord is seeking an Order of Possession and a monetary order claiming The issues to be determined based on the testimony and the evidence is whether the landlord is entitled under the *Residential Tenancy Act*, (the *Act*), to an Order of Possession under *section 55* of the *Act* based on the Notice to End Tenancy.

#### **Background and Evidence**

The landlord had submitted into late evidence a copy of the One-Month Notice to End Tenancy for Cause dated October 21, 2009 showing an effective date November 21, 2009 indicating that the tenant has significantly interfered with or unreasonably disturbed another applicant or the landlord and that the tenant has allowed an unreasonable number of occupants in the unit.

The tenant had not filed to dispute the notice. The tenant testified that it was her intention to vacate the unit on January 1, 2009. The tenant testified that the rent was paid up until that date.

The landlord acknowledged that rent was accepted for the month of December 2009, however it was never the landlord's intent to reinstate the tenancy.

### **Analysis**

The tenant was served with a One-Month Notice to End Tenancy for Cause and did not made application to dispute the Notice, therefore, under section 47(5) of the Act the tenant is conclusively presumed under to have accepted that the tenancy ended on the effective date of the Notice.

The fact that the landlord accepted rent for the month of December, 2009, brings forth the question of whether or not the notice was waived and the tenancy was reinstated. The question of waiver will arise when the landlord has accepted rent or money payment from the tenant after the Notice to End has been given and applicable to a period beyond the effective date of the Notice, in this case payment beyond November 30, 2009. The true intent of the parties

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 payment of rent would not reinstate the tenancy and that the money would be for use and occupation only, and
- the conduct of the parties.

To show implied waiver of a legal right, there must be some clear action of the party showing that the landlord's actions amounted to an estoppel. Estoppel is a special legal rule that prevents somebody from stating a second position which is inconsistent with one previously stated, especially when the earlier representation has already been relied upon by others.

I accept the landlord's position that the tenant did *not* rely on a perceived reinstatement of tenancy to the tenant's own detriment, regardless of the fact that

the landlord accepted rent for December. I find that the tenant's stated intention to move at the end of December and the tenant's failure to ever dispute the Two-Month Notice, constitutes conduct which confirms that the tenant did not perceive that the tenancy would continue and did not act in reliance on reinstatement.

After some discussion, a mediated discussion ensued and the parties reached a mutual agreement to end the tenancy as of January 1, 2010.

### **Conclusion**

Based on the above facts, and the mutual agreement reached by the parties, I find that the landlord is entitled to an Order of Possession effective January 1, 2010 at 1:00 p.m. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

December 2009

Date of Decision

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Dispute Resolution Officer