



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SANDY CREEK PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT

Introduction

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

- an Order of Possession pursuant to section 54.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was represented by her advocate, DD (tenant) and the landlord was represented by its property manager, LA (landlord). The hearing process was explained and the participants were provided the opportunity to ask questions. Both parties provided sworn testimony and were provided the opportunity to present their evidence, orally and in written documentary form and make submissions to me.

The parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents and were prepared to deal with the matters of the applications.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Can the tenant cancel a mutual agreement to end tenancy?

Background and Evidence

The tenant gave undisputed sworn testimony that she has been residing in the rental unit for over 30 years. She is aware that there are issues with cleanliness and clutter in the unit and that she now requires the assistance of a government agency to provide caretaking and in-home care. The tenant's witness KC, a nurse with the agency, testified that she has done a full assessment of the tenant, did some cleaning and decluttering of the rental unit and is willing to provide ongoing support for the tenant.

The tenant acknowledged that she signed the Mutual Agreement to End a Tenancy (Agreement) on September 24, 2018 agreeing the tenancy would terminate on December 31, 2018. She testified that when she signed the document, she wasn't sure what it was and that she felt compelled to sign it or she would be evicted. The tenant pointed out that her copy of the Agreement, the address to be vacated appears as suite 104 while she resides in suite 204.

The landlord gave undisputed sworn testimony that there have been ongoing discussions with the tenant regarding condition of the rental unit with regard to cleanliness and clutter. Walkthroughs and inspections of the suite were conducted in June of 2018 to assess the condition of the rental unit.

Two Agreements were signed by the tenant. The first Agreement was signed on June 22, 2018 stipulating the tenancy would terminate on September 30, 2018. On September 24, 2018, both parties signed a second Agreement to extend the termination date to December 31, 2018. This was done at the request of the tenant's caretaker/roommate, "G" in order to provide the tenant with additional time to find alternate living arrangements and find assistance to move out. A further extension until January 31, 2018 was agreed to between the parties for the same reasons although a third Agreement was not signed. The landlord testified that rent for the month of January was collected from "G" and the landlord verbally told him that the tenant would be required to move out at the end of January.

Analysis

Section 55 of the *Act* states that an Arbitrator must grant the landlord an order of possession of the rental unit if the landlord and tenant have agreed in writing to end the tenancy.

The Residential Tenancy Branch Policy Guideline #11 'Amendment and Withdrawal of Notice' is intended to help the parties to an application understand issues that are likely to be relevant. The Guideline provides:

A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date.

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

I do not accept the tenant's argument that she signed both of the Agreements under duress or that she didn't understand what she signed. I am satisfied she understood the content of the Agreements and the tenant knew she was agreeing to end the tenancy.

The tenant's second argument for not upholding the Agreement is that the wrong suite number was recorded on the September Agreement. Section 68 of the Act states that if a notice to end a tenancy does not comply with section 52 *[form and content of notice to end tenancy]*, the director may amend the notice if satisfied that (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and (b) in the circumstances, it is reasonable to amend the notice. In this case, given the background of the parties and their actions, and given the fact that the tenant had the opportunity to raise this issue before she signed it, I am satisfied the tenant ought to have known that the landlord was seeking to end the tenancy for suite 204. I amend the Agreement accordingly.

The third argument of the tenant is that the landlord's acceptance of rent for the month of January, 2019 either reinstates the original tenancy or creates a new tenancy agreement. Once again, Residential Tenancy Policy Guideline 11 provides guidance in this situation.

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.

Neither party has entered a copy of the January receipt into evidence or called the tenant's roommate "G" as a witness. The landlord provided undisputed sworn testimony that when they accepted rent money from "G" for the month of January they advised him that they were allowing the tenant to stay another month so the tenant could get the assistance she required to move. I find that there was no waiver of the landlord's intent to end the tenancy. The conduct of the landlord remained consistent. I find that there has been no reinstatement of the original tenancy or a new tenancy agreement established.

Conclusion

The tenant's application for an Order of Possession is dismissed without leave to reapply.

I grant the landlord an Order of Possession effective at 1:00 p.m. on January 31, 2019.

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: January 08, 2019

Residential Tenancy Branch