

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain an Order to cancel a notice to end tenancy issued for cause and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on May 13, 2010. The Landlord confirmed receipt of the hearing package.

The Landlord, the female Tenant, the male Tenant, and the Tenants' adult son appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Are the Tenants entitled to an Order under section 47 of the *Residential Tenancy Act*?

Background and Evidence

Witness' Testimony

At the onset of the hearing the Landlord's Witness testified that she was hired by the Landlord to complete an appraisal on the Landlord's rental property. She stated that she attended the rental unit at approximately 12:30 p.m. on a Saturday in April, 2010 to complete the appraisal on the fourplex. The Witness stated that they viewed the Tenants' suite first, then went onto the other suites and ended with viewing the laundry room. While the Witness was inside the laundry room looking at the electrical box she overheard an altercation between the Landlord and female Tenant. The Witness stated that this altercation had to do with the laundry room lock and keys and that it turned into a screaming match where the Tenant was using profanity directed towards the Landlord and the Witness. The Witness confirmed that the female Tenant repeatedly told them "to get off her F-in property" but that she used the full swear word and not F-in. The Witness argued that the laundry room door was partially open and the female Tenant was facing both her and the Landlord while she was screaming the profanities. The Witness went on to explain that she has been trained, for her own safety, to leave the premises if an altercation breaks out and this situation was indeed an altercation so she left. The Landlord and Witness left together to go to their separate vehicles and the Witness carried onto her next appointment.

Landlord's Testimony

The Landlord testified and referred to her documentary evidence which included among other things a copy of the tenancy agreement, photos of the doorways entering into the Tenants' suite and the common laundry room, the notice to the Tenants that the appraiser would be attending on April 10, 2010, e-mails between the Landlord and female Tenant, and a decision issued from a previous dispute resolution hearing.

The Landlord stated that when they attended the rental unit on April 10, 2010, they began with the Tenants' unit and then the female Tenant accompanied them to an upper unit at the request of that tenant. The Landlord and appraiser continued on to the rest of the units while the female Tenant returned to the patio outside her unit. The Landlord stated that they ended the walkthrough with the common laundry room and when they were approaching the laundry room entrance the Landlord was searching her key ring to locate the laundry room key at which point the female Tenant told the Landlord her key was already in the lock. The Landlord responded to the female Tenant by stating she should not be leaving her key in the lock especially after the Landlord had spent the extra money to have a lock installed which locks automatically when the door is closed to safe guard the tenants possessions. The Landlord argued that this is what sparked the altercation and that the female Tenant began to yell and scream at the Landlord. The Landlord stated that the female Tenant attempted to slam the door in the Landlord's face at which point the Landlord placed her foot out to prevent the door from closing. The Tenant was standing to the right of the door and was screaming at the Landlord and appraiser to get of her (f.....ing) property (the Tenant screamed the full swear word).

The Landlord argued the female Tenant interfered with the Landlord's lawful right to attend the rental unit when the Tenant began cursing, swearing, attempting to slam the door in the Landlord's face, and demanding the Landlord and appraiser leave. The Landlord felt the female Tenant's actions were an assault which made her feel assaulted, and she was shaken up over this ordeal. The female Tenant's actions were more than just verbal they were an attack on the Landlord's person. The Landlord argued that she did not know what extent of injury she would have suffered had she not been able to stop the door from being slammed against her. The Landlord stated that she was not able to move backwards as the appraiser was directly behind her and on retrospect the Landlord was grateful she had placed her foot forward and not her hands.

After discussing the situation with the *Residential Tenancy Branch* (RTB) the Landlord completed the 1 Month Notice to End Tenancy and checked off the boxes as instructed by the Information Officer at the RTB. The Landlord stated that she gave consideration to the male Tenant's medical concerns and what had transpired during her previous visit so she decided to serve the notice when she had another reason to attend to the unit. As it turned out the Landlord had to attend the Tenant's unit with a plumber on April 28, 2010, so once the plumber had completed his work the Landlord handed the male Tenant the envelope containing the notice as they were exiting the suite.

Male Tenant's Testimony

The male Tenant confirmed receipt of the 1 Month Notice to End Tenancy, by hand on April 28, 2010 as stated by the Landlord. The male Tenant confirmed that there were no incidents or occurrences from the altercation on April 10, 2010 and when they received the Notice to End Tenancy on April 28, 2010.

The Male Tenant described the laundry room door as opening out into the patio area and to the right, with the hinges located on the exterior of the door.

Female Tenant's Testimony

The female Tenant testified and referred to her documentary evidence which included among other things, a copy of the 1 Month Notice, a statement written by the female Tenant dated May 6, 2010, e-mails between the Landlord and Tenant, reference letters issued by other tenants in the fourplex, and a copy of a letter written by the Landlord dated April 13, 2010 regarding "notice to remove all installations on common area property.

The female Tenant provided a history of events which occurred on April 10, 2010 which included the Landlord and Appraiser attended her suite, then she accompanied them to another tenant's suite, and she left them and returned to her patio area and sat with her son planning out a strategy on how they would go search for her spouse. The Tenant's spouse had been out for a walk and his return was overdue which caused the Tenant additional stress. The Tenant claims she did not tell the Landlord that her key was in the door but that the Landlord approached the door and saw the Tenant's key in the lock and began to question the Tenant why her key was in the door. The Tenant replied to the Landlord "I'm right here" after which an argument began. The Tenant stated the argument went on for about 5 minutes. The Tenant argued that she pulled the door out and did not push the door in toward the Landlord. The Tenant stated that she just wanted them off her property and she was upset so she told them about three times to get off her "f...." property. (The full swear word was used).

The Tenant argued that her profanity was never directed at the appraiser and that her frustrations were only directed to the Landlord. When asked why the appraiser would state the Tenant was swearing at her the Tenant replied that she swore at them three times to get off her F...in property and then said "oh maybe you didn't hear me get off my f...in property", while the Landlord and appraiser were standing on the cement walkway. The Tenant stated that she also yelled out "don't look at me, poor you you've been torturing me for years trying to get us kicked out of here".

Tenants' Son's Testimony

The Tenants' adult son provided testimony and confirmed that he agreed with his mother's testimony. The son stated that his mom did not tell the Landlord to use her key and his mom grabbed the laundry room door pulling it out and yelled, "I've had

enough". The son stated that his mother told him that she was not going to take the Landlord mocking her any longer.

In closing the Landlord testified that the parties disagreed on two issues. First what was said about the key in the lock and second whether the door was closed towards the Landlord or pulled out into the patio area. The Landlord argued again that the female Tenant was standing to the right of the door so she could only push the door towards the Landlord and that if she was pulling it open she would have had to be standing to the left of the door to prevent it from hitting herself.

The Landlord stated that after giving consideration to the male Tenant's medical condition she was not requesting an immediate Order of Possession and instead requested an Order of Possession effective August 31, 2010.

Analysis

All of the testimony and documentary evidence was carefully considered.

When considering an application to dispute a 1 Month Notice to End Tenancy for Cause the burden of proof lies with the Landlord to prove that there was cause.

A significant factor in my decision is the consideration of the testimony provided by the Landlord's Witness and the Tenants' Witness. I am required to consider the evidence against its consistency with the probabilities that surround the preponderance of the conditions before me. I find that the Tenants' Witness' evidence was coloured by the fact that he is their son and is beholden to the Tenants as they still provide for him. I prefer the appraiser's evidence as to the events that took place. I find the female Tenant significantly interred with the appraiser and the Landlord while they were conducting the Landlord's business at the rental unit. The female Tenant created a disturbance of such unrest that the Landlord and appraiser both felt threatened

The female Tenant wrote in e-mails to the Landlord, prior to the April 10, 2010 incident, "please send me an eviction notice over this one!!!! I welcome it." or "Please don't blame your over priced fourplex suite not being rented on your lower paying long term tenants. It's getting old". This evidence supports the female Tenant displayed antagonistic behaviour towards the Landlord even prior to the April 10, 2010 visit, and in some cases has been baiting the Landlord.

Upon review of the Notice to End Tenancy, I find the 1 Month Notice to End Tenancy issued April 28, 2010, to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenants in a manner that complies with the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice and therefore I dismiss the Tenants' application to cancel the Notice.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenants' request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing.

The Tenants have not been successful with their application; therefore I decline to award recovery of the filing fee.

Conclusion

I HEREBY FIND that the landlord is entitled to an Order of Possession effective **August 31, 2010, at 1:00 p.m. after service on the Tenants**. This order must be served on the Respondent Tenants and may be filed in the Supreme Court and enforced as an order of that Court.

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 29, 2010.

Dispute Resolution Officer