

DECISION

Dispute Codes CNC

Introduction

This is an application by the tenant to cancel a notice to end tenancy for cause. Both parties attended by conference call and gave affirmed testimony. The Landlord advanced an oral application to have a summons issued for the attendance of an RCMP Constable to give evidence.

Issue to be Decided

Are there grounds to support the Landlord's claim to end the tenancy?

Background and Evidence

The landlord has served a 1 month notice to end tenancy for cause on the tenant on August 25, 2010, requiring the tenancy to end on September 30, 2010.

The Tenant filed an application to cancel a notice to end tenancy on August 28, 2010.

The purpose of the hearing is to determine whether grounds exist to support that decision. The notice relies on section 47 of the Act. The Landlord has stated that cause for this notice to end tenancy results from the police incident at the tenant's residency. According to the tenant the uninvited individual entered the residence and was asked to leave by the tenant's boyfriend. That same individual came back later and assaulted the tenant's boyfriend with a knife. The Landlord states that the police attended to a 911 call for assistance regarding an assault, but did not apprehend anyone for the assault or identify anyone responsible. The victim was stabbed and sent to the hospital. The Tenant gave evidence that the individual was known to them as a neighbour, but were never at any time a guest in the residence. The tenant states that they did not provide any information to the police as the individuals were thought to be gang affiliated and feared for their safety.

The landlord has made several attempts to contact the tenant prior to the notice to end tenancy was served, two attempts by telephone that were unsuccessful, one by leaving

a message with the tenant's daughter and by way of the letter dated August 17, 2010 submitted in evidence. The Tenant states that she called the Landlords office and was told that she was out of the office and not able to take the call.

Analysis

I find that the Landlord failed to submit a written application for a summons to testify to the Residential Tenancy Branch prior to the hearing date. The Landlord's oral application after the hearing commenced for a summons to issue is contrary to 7.1 of the Residential Tenancy Branch Rules of Procedure. I find that the Landlord had ample time to file this application, but did not. No prior notice by the landlord was given either to the tenant or the residential tenancy branch. Based upon the oral evidence by the landlord, I find that the RCMP Constable would not provide any substantial evidence. In looking at Rule 6.4 in determining if there is any possible prejudice to the parties, I find that it is the responsibility of the parties to have those witnesses that are being relied upon available at the hearing. The tenant had witnesses available and was ready to proceed, the landlord was not. I dismiss the landlord's oral request for a summons to issue. The Hearing continued with oral evidence by both parties. I find on a balance of probabilities that the landlord has presently failed to meet the burden of proving there is sufficient evidence for cause to end the tenancy. There is no evidence provided by the landlord that the tenant invited or initiated any contact with this individual at the residence, resulting in this incident.

Conclusion

The notice to end tenancy is hereby set aside, and the tenancy presently continues in full force and effect.

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*.