



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

Dispute Codes:

CNC, MNDC, OPC

Introduction

This Application for Dispute Resolution was to deal with a request by the landlord seeking an Order of possession based on a One-Month Notice to End Tenancy for Cause dated December 30, 2010 and an application by the tenant seeking to cancel the One-Month Notice to End Tenancy for Cause. Both parties appeared and gave testimony in turn.

Issue(s) to be Decided

The tenant is disputing the basis for the notice and the issues to be determined based on the testimony and the evidence is whether the criteria to support a One-Month Notice to End Tenancy under section 47 of the *Residential Tenancy Act*, (the *Act*), has been met, or whether the notice should be cancelled on the basis that the evidence does not support the cause shown.

The burden of proof is on the landlord to establish that the notice was justified.

Background and Evidence: One Month Notice

The tenancy began on October 5 or 6, 2010 with rent set at \$400.00 and a security deposit of \$200.00 was paid. The tenant had submitted into evidence a copy of the One-Month Notice to End Tenancy for Cause dated December 30, 2010 showing an effective date of January 30, 2010. The One-Month Notice to End Tenancy for Cause indicated that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, seriously jeopardized the health, safety or lawful right of another occupant or the landlord, has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord or jeopardized a lawful right or interest of another occupant or the landlord and breached a material term of the tenancy agreement.

The landlord testified that the One Month Notice was issued on December 30, 2010 after incidents in which the tenant was accused of going into other resident's rooms and stealing money and possessions. The police attended but no charges were laid. However, according to the landlord, some of the other renters were certain that the tenant was involved in the thefts and provided written testimony to that effect. The landlord testified that the tenant was acting guilty.

The tenant testified that he did not steal anything and pointed out that the two residents who made the accusation had their own agenda. The tenant believes that the Notice should be cancelled as there is absolutely no merit to the claims made against him.

In regard to the tenant's monetary claim, the tenant testified that he suffered substantial humiliation and indignities because of the false allegations made against him and is asking for \$300.00 compensation.

Analysis: One Month Notice to End

It is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the landlord in this case, has the onus of proving during these proceedings, that the One Month Notice to End Tenancy for Cause is justified under the Act.

I find that, in any dispute when the evidence consists of conflicting and disputed verbal testimony, in the absence of independent proof, then the party who bears the burden of proof is not likely to prevail.

In this instance I find that the parties are completely at odds with one another's facts with little agreement as to what happened. However, I find it is not necessary to determine which side is more credible or which set of "facts" is more believable because the party seeking to terminate the agreement, that being the landlord, has not succeeded in sufficiently proving that ending this tenancy for cause was justified.

A mediated discussion ensued and the parties agreed that it would be most convenient for all concerned to end the tenancy as of March 30, 2011 by consent. Accordingly, I hereby grant an Order of Possession to the landlord reflecting this agreement. The tenant is at liberty to leave earlier without penalty should he find any suitable accommodation prior to March 30, 2011 and the tenant would then be entitled to a refund of the portion of the month remaining for which he had already paid.

In regard to the tenant's request for \$300.00 monetary compensation for humiliation and harassment, I find that this situation does not satisfy the criteria to make such an award

under the Act. Accordingly I find that the portion of the tenant's application seeking a monetary order must be dismissed.

Conclusion

Based on the above, I hereby order that the One-Month Notice to End Tenancy of December 30, 2010 be cancelled and of no force nor effect. Pursuant to the mutual agreement reached between these parties, I hereby issue an Order of Possession in favour of the landlord effective March 30, 2011 at 1:00 p.m. This Order must be served on the Applicant tenant and may be enforced by the Supreme Court if necessary.

The remaining portions of both applications are dismissed without leave.

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 2011.

Residential Tenancy Branch