



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MT, CNC, FF

Introduction

This matter dealt with an application by the tenant for more time to cancel a Notice to end tenancy, to cancel a Notice to End Tenancy for cause, and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent by registered mail to the landlord on December 10, 2010. The landlord confirmed receipt of these documents.

The landlords' agent and the tenant appeared. The tenant was supported by her case worker. All parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Preliminary Issues

The tenant has applied for more time to file her application to cancel the Notice to End Tenancy. The Notice was served to the tenant by posting it to her door on November 30, 2010. This Notice was deemed served three days later on December 02, 2010. The tenant filed her application to cancel the Notice on December 08, 2010. Therefore the tenant did apply within the 10 allowable days to cancel the Notice and she does not require more time to file her application.

Issue(s) to be Decided

- Is the tenant entitled to cancel the Notice to End Tenancy for cause?

Background and Evidence

Both parties agree that this month to month tenancy started on November 01, 2005. The tenant pays a monthly rent of \$447.00 which is due on the 1st day of each month.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy for cause as stated above. This gave an effective date to end the tenancy of January 04, 2011. The landlord testifies that the following reasons were given on the Notice: That the tenant has significantly interfered with or unreasonable disturbed another tenant and the tenant 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.

The landlord states she was provided with a list of police reports from Vancouver Police Department regarding the tenants' unwanted contact with another tenant who lives in the building. The landlord explains this is a senior self care building housing 100 tenants. The police spoke to the landlord and told her the tenant has had unwanted contact with a male tenant residing in the building. The police have been called out on numerous occasions and the tenant was arrested and charged with criminal harassment towards this other tenant. The list from the Police also states that this is not a comprehensive list of all contacts the police department have had with this tenant regarding her unwanted contact with the male tenant.

Release conditions were put in place and the tenant was told not to contact or attend the male tenants' residence. Since that time the tenant has breached these conditions and was subsequently arrested again on February 11, 2010, February 17, 2010, April 20, 2010 and November 20, 2010. The landlord states the tenant also has a Restraining Order against her for harassment of this male tenant.

The landlord states the police presence at the building has also caused distress to some of the other senior tenants living there and she requests an Order of Possession to take effect on February 01, 2011.

The tenant does not dispute that she has a Restraining Order against her and has been arrested on different occasions. The tenant is vague about how many times she has been arrested and does not recall which months. The tenant states that she honoured the Restraining Order and did not contact this male tenant until the male tenant telephoned her and it sounded as if he was choking so she states she went to his unit, knocked on the door to see if he was alright. When she confirmed he was alright she states she left his unit. The tenant denies writing love letters to this tenant and states on one occasion she did slip a note under his door and did knock on his door in November, 2010.

The tenant states this male tenant continues to call her and leave messages for her. She states he comes knocking on her door. The tenant states this male tenant does not want the Restraining Order against her and claims this has been instigated by the male tenants' son.

The tenants' case worker states the tenant is not a threat to this male tenant or any other tenants but states she is reluctant to tell the police that this male tenant has been contacting her. The tenants case worker states that this is a two way contact but no one appears to be following up on the male tenants contact with this tenant. He states a hearing was set for January 12, 2011 but was adjourned as the tenant was in hospital at the time. The tenants' lawyer is working through the judicial system and a new hearing date has not yet been set. He explains that the tenant is an elderly lady and losing her home would be catastrophic for her.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both Parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The landlord has provided compelling evidence from the police regarding the number of times this tenant has been arrested for unwanted contact and for breaching the terms of her release. The tenant herself states that she has a Restraining Order against her and she did contact the male tenant after this Order was issued. I also find the alleged events did take place which led up to her being arrested at least four times in 2010.

The tenant should have known that any form of contact with the male tenant is contrary to the term of her release and the restraining Order against her. Consequently, I find the landlord has provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is upheld and the tenancy will end on February 01, 2011.

As the tenant has been unsuccessful with her application she must bear the cost of the filing fee herself.

Conclusion

The Tenant's application is dismissed. The One Month Notice to End Tenancy for Cause dated November 30, 2010 will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on February 01, 2011 This order must be served on the Tenant 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: January 20, 2011.

Residential Tenancy Branch