



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

FINAL DECISION

Dispute Codes:

ET

Introduction

This hearing was reconvened as a result of my interim decision issued on March 21, 2011, in which I determined that the matter under dispute falls within the jurisdiction of the Act.

The landlord has made application for an early end of the tenancy and an Order of possession.

Both parties were present at each hearing. At the start of each hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

At the start of the reconvened hearing I again reviewed all of the evidence submissions and made specific determinations in relation to each evidence submission that had been served to the Residential Tenancy Branch (RTB.) A number of documents and photographs were set aside due to a failure of the party to properly serve the other. For example, the landlord's photographs were served to the tenant as photocopies of the originals, which had been given to the RTB. These photographs were not considered as the tenant did not have the benefit of clear, discernable original copies.

At the start of the reconvened hearing the landlord pointed out several errors contained in my interim decision. The landlord stated that the tenant had received the notice of hearing documents on March 17, not March 16, 2011. The landlord stated that the photographs were served to the tenant effective March 11, 2011; however the landlord acknowledged that those photographs would not be considered during the hearing. The landlord also pointed out that her room did not contain a bathroom; that it was adjacent to her room. The landlord submitted a copy of the tenancy agreement; not the tenant. The tenant stated he could not obtain his copy as the landlord will not allow him to enter the rental unit.

The landlord stated that I was refusing to allow both her and the tenant to make their submissions, as I kept interrupting. I then explained to the parties that it is my practice at the start of each hearing to review the hearing process and to review evidence in order to ensure that both parties understand the process before testimony is given. I explained that once I completed my review of the preliminary matters and the parties'

questions on the process of the hearing were answered, the hearing would then proceed and I would allow submissions to be made.

Issue(s) to be Decided

Is the landlord entitled to end this tenancy early without the requirement of a Notice to End Tenancy?

Is the landlord entitled to an Order of possession?

Background and Evidence

At the start of the hearing the parties agreed that the tenancy commenced on May 20, 2010; rent in the sum of \$500.00 is due on the 20th of each month.

The tenant rents a unit in the lower portion of a house; there are occupants in a unit on the main floor of the home, which includes a bedroom that is in the lower level of the home, adjacent to the tenant's unit. The landlord resides part-time in R.; the rental unit is in S.

The occupants of the unit on the main floor and adjacent room are a mother C.D.; her son, her own mother and several other individuals.

The landlord testified that the tenant has caused problems in the past, that he is aggressive, known to the police and is violent. The landlord alleged an assault occurred against a female occupant whose bedroom borders the tenant's unit.

On March 5, 2011, the landlord became aware of an alleged assault of a tenant that lived on her rental unit street. The landlord contacted the occupants of the main floor unit and was told by C.D.'s mother, that the tenant had assaulted her daughter in the early hours of March 5, 2011.

The landlord was told that the tenant had been shoveling the sidewalk at 2 a.m. and that when the female occupant went outside to confront him, she tried to grab the shovel and that the tenant pushed her against a wall, causing bruising to her face.

The landlord provided a list of 6 witnesses upon whom she was relying for testimony; one of these witnesses provided a written statement dated March 22, 2011.

A call was placed to C.D.'s home, at the phone number supplied by the landlord for 4 of her witnesses; all occupants of the unit on the main floor of the rental unit building. Only one of the 4 witnesses was present and prepared to provide testimony; the son of C.D.; D.D.

Witness D.D. was affirmed and asked by the landlord to provide an account of the events of March 5, 2011. D.D. testified that he did not witness any of the events but that they were described to him by his mother, C.D. D.D. related that his mother had heard the tenant outside shoveling for a long period of time; that he had been knocking on her door for a long period of time trying to get her attention, that the tenant threw snow in her face, that he moved toward her, that she pushed the tenant and then fell as a result of knocking the tenant back with the shovel. D.D. stated his mother told him that the tenant had attacked her.

D.D. stated his grandmother heard the altercation from her bed and that when C.D. came upstairs his grandmother saw what had happened. The police were called, attended at the home and the tenant was arrested.

D.D. alleged that the tenant has been a problem for some time; that they lose sleep as a result of his constant parties, but that they have wished to keep to themselves and have not complained.

The March 22, 2011, written statement from a friend of the landlord's, indicated that in the past the tenant has told him he wants to punch people, that the tenant told him C.D. obtained the bruises at work or had used make-up to create them. This individual stated it would be dangerous and disrespectful to allow the tenant to return to the unit.

The landlord stated that she cannot allow the tenant to return to the property as she must take steps to protect the other occupants of the home. The landlord stated that the tenant had turned the power and furnace off, as the controls are in his unit. The tenant stated he did not know how the power and heat had been turned off.

Toward the conclusion of the hearing the landlord stated that on March 10, 2011, she had submitted written statements from each of her witnesses. This evidence was not allowed as it was not served; however, the landlord was provided with an opportunity to read from a statement given to the police by C.D.

C.D.s written statement read by the landlord included multiple allegations made against the tenant; some of which alleged harassment and abuse over a period of time. Some of the allegations made were serious in nature. C.D. described the evening of March 4, 2011, in the written statement:

- Commencing at 9:30 p.m. the tenant began knocking on her door;
- That she told him to leave as she had to work at 2 a.m.;
- That the tenant was vacuuming at 10 p.m.;
- That the tenant slammed a door at 11:30 p.m.;
- At 12:30 a.m. the tenant came to her door asking her to call his cell phone as he had lost it;
- That the tenant began yelling through her door, turning the electrical breakers off and on, that she ignored him but he kept yelling;
- That she then confronted the tenant, told him to turn the power on and that he then "got physical";
- That she told the tenant to shut-up; and

- That this was not an isolated incident; she has been prisoner in her own home for months, that she fears for her family's safety and that the tenant threatened to harm her pets.

The statement read by the landlord did not provide any details of what is alleged to have occurred during the altercation with the tenant. The tenant stated that C.D.'s allegations were horrible and that if he had been served with a copy of this statement prior to the hearing he could have had witnesses attend the hearing to testify to his past relationship with C.D. as having been without any problems.

The tenant provided a very detailed accounting of the events of March 4 and 5, 2011; which differed from C.D.'s statement read by the landlord. The tenant stated that C.D. works most nights at 4 a.m. and that she often comes to his unit around 1 a.m. after her mother has gone to bed. The tenant testified that C.D. was in his unit using drugs, something she wanted to hide from her mother.

The tenant came to the conclusion that C.D. had taken his cell phone and that he then threatened to tell C.D.'s mother she was using drugs. The tenant testified that there was conflict over his allegation that C.D. had taken his cell phone and that he stepped outside for a cigarette. It had snowed, so the tenant began to shovel a space on the sidewalk. At this point the tenant alleged that C.D. came out of her unit and started hitting him; that she grabbed the shovel and began assaulting him. The tenant was holding onto the shovel with one hand and admits to having thrown snow on C.D.'s face, in an attempt to get her to stop. When C.D. managed to get the shovel away from the tenant, as he released his grip on the shovel, the shovel then hit C.D. on her face.

After the altercation C.D. went back into her unit and the tenant returned to his; sometime later the police arrived and arrested the tenant. The landlord stated that the tenant is not allowed to be at the rental unit; the tenant denied that he is not allowed to go to his home address; just that he needs to stay away from C.D.

The parties are in a dispute over access to the rental unit and much of the testimony given referenced the events that unfolded after the alleged assault occurred; with the tenant submitting the landlord has denied him access to his home.

Each of the tenant's witnesses provided testimony in relation to attendance at the rental unit subsequent to March 4, 2011, in order to retrieve belongings on behalf of the tenant.

The tenant asked the landlord why she has allowed him to work for her and why the landlord has allowed him to act as a "go between," with the occupants of the home. The tenant stated that if the landlord found him to be a violent person, she would not associate with him or expect him to deal with the occupants.

The landlord stated that she has given the tenant chances and that it was his choice to deal with the occupants.

Analysis

In order to establish grounds to end the tenancy early, the landlord must not only establish that she has cause to end the tenancy, but that it would be unreasonable or unfair to require the landlord to wait for a Notice to end the tenancy under section 47 of

the Act to take effect. Having reviewed the testimony of the landlord and her witness I find that the landlord has not met that burden.

Toward the end of the hearing the landlord testified that a number of written witness statements were submitted to the RTB on March 10, 2011. The landlord did not reference this evidence at any time during my review of all evidence submissions during the first hearing, or during my thorough review made of all evidence at the start of the reconvened hearing. The landlord was informed that the absence of the witness statement evidence, combined with the failure of the landlord to reference this evidence at the start of either hearing, when I had reviewed each evidence submission and made decisions in relation to the admissibility of that evidence; caused me to conclude that the written statements had not been received by the RTB and that an adjournment to consider the evidence was not appropriate.

The only written witness statement before me was submitted by the landlord and served to the RTB on March 22, 2011.

In relation to sufficient cause, I am concerned that the person reportedly most affected by the alleged assault, occupant C.D., failed to attend the hearing to provide testimony. C.D.'s written statement, read by the landlord, included a number of allegations made against the tenant in relation to past behaviour; there was no evidence before me that any of those past allegations had ever been reported or validated; therefore I gave them no weight.

In relation to the alleged assault, the only reference that C.D.'s statement made to this was that she confronted the tenant and that he "got physical." C.D.'s statement provided no information as to what she meant by her statement that the tenant "got physical." The statement did not indicate who became "physical" first or any detail as to how or even if she suffered any injury as a direct result of the actions of the tenant.

The description of events provided by witness D.D. conflicted with the details given by the tenant. D.D. testified he was told that C.D. was shoved into a wall; while the tenant testified that C.D. had fallen as a result of a struggle over a shovel, which he had released from his grip, resulting in the shovel hitting C.D. The witness was only able to relay information provided to him by his family.

I have considered the testimony of the parties and the evidence before me in an effort to establish credibility in relation to the disputed testimony. I have also considered the burden of proof, which falls to the landlord, as the applicant. The real test of the truth of the story of a witness must align with the balance of probabilities and, in the circumstances before me; I find the version of events provided by the tenant to be highly probable given the conditions that existed at the time. Considered in its totality, I favour the evidence of the tenant over the landlord's witness and C.D.'s written statement read by the landlord. I also found C.D.'s written statement bereft of any details of the "physical" altercation.

There is no doubt that an altercation occurred in the early hours of March 5, 2011. However, I find, on the balance of probabilities that the landlord has not proven the tenant was the individual responsible for initiating conflict with C.D. In fact, C.D.'s own statement showed that she went outside to confront the tenant; which aligned with the tenant's testimony.

The other general accusations made against the tenant, such as a propensity for violence, are unproven and had no bearing on my decision.

There is no evidence before me that the police or the courts found it necessary to ban the tenant from his rental unit. The testimony for each party indicated that the tenant is not to have contact with C.D.; however, there was no evidence before me that the tenant was ordered to remain away from his home. In the absence of any evidence that justice officials believed that the tenant could not remain in his home, I find that a request for an early end of tenancy is unsupported.

Secondly, I find that it would not be unreasonable and unfair to require the landlord to wait for a notice to end the tenancy under s. 47 and therefore I find that the landlord's application is dismissed.

Conclusion

The landlord's application is dismissed.

The landlord is at liberty to issue a 1 Month Notice Ending Tenancy for Cause.

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: April 05, 2011.

Residential Tenancy Branch