



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, FF, CNC, FF, OLC, RR

Introduction

Some documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and the witnesses the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witnesses.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together.

First of all it is my decision that I will not deal with all the issues that the applicants have put on their applications. For claims to be combined on an application they must related.

Not all the claims on these applications are sufficiently related to the main issue, to be dealt with together.

I therefore will deal with the landlords request for an Order of Possession based on a Notice to End Tenancy, and with the request for recovery of his filing fee, and I will deal

with the tenants request for an order setting aside the Notice to End Tenancy, and with the request for recovery of her filing fee.

I dismiss the remaining claims with liberty to re-apply.

Background and Evidence

The landlord testified that:

- Another tenant in the rental property informed him that the respondent viciously attacked her, knocking over her shelving unit, and breaking her valuables that were on the shelving unit.
- After being informed of this attack he decided to end the tenancy and therefore gave the respondent a Notice to End Tenancy.
- There was no one else present when the alleged attack occurred and so no one witnessed this attack.

Witness number one for the landlord testified that:

- She is the tenant that was viciously attacked by the respondent.
- The respondent viciously pushed a shelving unit towards her, which brushed her arm and went crashing to the ground, breaking her ceramic items.

Witness number two for the landlord testified that:

- The respondent told him that she was going to make it hell for the landlords to get rid of her.
- The respondent also told him that the other tenant (witness number one) had threatened her with a pitchfork.

The respondent testified that:

- She has never attacked the other tenant in the rental property and although she did knock over the shelving unit it was entirely accidental as she leaned against it by mistake when she meant to lean against the outdoor post.
- When the shelving unit fell it did not even touch the other tenant so she fails to see how she can be accused of any vicious attack.
- The other tenant (witness number one) is the aggressive person in this rental property and at one time actually threw a pitchfork at her, although she too has no witness to this event.
- The other tenant claims there is a police report, however the police have never spoken to her about any alleged attack.

Analysis

The burden of proving a claim lies with the applicant.

In this case is my decision that the landlord has not met the burden of proving that the respondent/tenant ever attacked another tenant in the rental property.

There is no witness to the alleged attack and therefore it is just one tenants word against that of the other and that is not sufficient to meet the burden of proof.

It's obvious that there is a great deal of animosity between the two tenants in the rental property, however animosity is not sufficient reason to end the tenancy.

Conclusion

Tenant's application

I hereby set aside the one month Notice to End Tenancy dated August 17, 2011 and this tenancy continues. I further order that the landlord bear the \$50.00 cost of the filing fee and therefore the tenant may make a one-time deduction of \$50.00 from future rent payable to the landlord.

Landlord's application

The landlord's application for an Order of Possession is dismissed without leave to reapply and I further order that the landlord bear the \$50.00 cost that he paid for his filing fee.

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: September 27, 2011.

Residential Tenancy Branch