Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   CNC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; the landlord and a witness for the landlord.

During the hearing, the landlord's agent did not verbally requested an order of possession should the tenant be unsuccessful in his Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The parties agree the tenancy began in May 1994 as a month to month tenancy for a monthly rent of $447.00. The tenant provided a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on February 29, 2012 with an effective date of March 31, 2012 citing the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord's agent asserts the tenant assaulted another tenant in the complex on February 27, 2012 in the elevator. The landlord's witness stated the tenant and the witness had had difficulties for some time and that the tenant does not like the witness, who also lives in the residential property.

The witness testified that the two were having an argument and the tenant hit the witness in the face. The landlord's agent testified that while he was not on-site at the time that his on-site manager saw the witness shortly after the altercation and the witness told her the tenant had hit him. The agent read into evidence a statement from the on-site manager. The agent also read into evidence passages from the tenant's file but provided no documentary copies of these records.

The tenant asserts that the two were having an argument and there was a lot of pushing back and forth on the part of both him and the witness but that he, the tenant, never hit the witness in the face. The tenant testified the landlord never came to discuss this matter with him; they just issued the 1 Month Notice.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

In the event that a landlord issues a notice under Section 47, the landlord has the burden to provide sufficient evidence to establish the landlord has sufficient cause to end a tenancy. While I acknowledge a physical assault is a serious infraction and is usually an appropriate cause to end the tenancy, I note that the two parties to the incident have differing testimony on what transpired.

In the absence of any additional evidence or investigation on the part of the landlord I find the landlord has failed to establish the tenant, singularly, is at fault for the altercation. Therefore, I find the landlord has failed to establish sufficient cause to end the tenancy.

Conclusion

For the reasons noted above, I order the tenant may disregard the 1 Month Notice to End Tenancy for Cause issued on February 29, 2012 and I find the tenancy remains in full force and effect.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **$50.00** comprised of the fee paid by the tenant for this application. I order the tenant may deduct this amount from his next rental payment in satisfaction of this compensation.

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: March 26, 2012.

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Residential Tenancy Branch