



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a one month notice to end tenancy for cause issued on March 8, 2012.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The tenant has applied to cancel a notice ending tenancy for cause issued on March 8, 2012 the effective date of the Notice was April 10, 2012. In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

The landlord's agent requests an order of possession if the tenant's application is dismissed.

Issue(s) to be Decided

Should the one month notice to end tenancy issued on March 8, 2012, be cancelled?

Background and Evidence

The tenancy began on April 10, 2011. Rent in the amount of \$850.00 was payable on the first of each month. A security deposit of \$425.00 was paid by the tenant.

The landlord's agent testified they are seeking to end tenancy for an incident that occurred on February 14, 2012.

The landlord's witness testified that he is the resident building manager and on February 14, 2012, at approximately 11:30 p.m. he received a complaint from another occupant that there was a fight in the tenant's rental unit. The landlord's witness stated he went to the floor where the tenant's rental unit is located and upon his arrival the tenant was throwing personal items into the hallway causing damage to the wall.

The landlord's witness testified the tenant was screaming and shouting and he asked the tenant if she would keep the noise down, however, the tenant was in such a rage that she chased him down the hallway.

The landlord's witness testified the tenant had a book in her hand and was trying to hit him and he was fearful of being assaulted, he called 911, three times during this incident.

The landlord's witness testified when the police arrived he was told other occupants in the building had also called 911. The police asked him to remain in this rental unit while they took control of the situation.

The landlord's witness testified an occupant in another rental unit made an audio recording of the tenant's behaviour from inside his rental unit and on the recording you can hear the tenant yelling and screaming at the police and her behaviour is horrible.

During the hearing the audio recording was played, on that recording you could hear a women screaming and yelling.

The tenant testified that the incident did happen. The tenant states she got into a fight with her partner and was very angry and was packing bags and had thrown items into the hallway. The tenant states she had mixed alcohol and prescription drugs and lost control.

The tenant further testified that since this incident she has been attending meetings for alcoholism and meetings with her doctor regularly. The tenant states this one incident should not be enough to end tenancy. The tenant states she was not charged with a criminal offence.

Analysis

Based on the above, the testimony and evidence, an on a balance of probabilities, I find as follows:

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord's agent has provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;

On February 14, 2012, the tenant acknowledged that she had combined alcohol and prescription drugs and that she got very angry and she lost control of her temper.

The evidence of the landlord's witness was that the tenant was in such a rage she chased him down the hallway trying to hit him with a book and he was fearful of being assaulted and he called 911, three times.

Several occupants in the building called 911, and one occupant made an audio recording of the tenant's behaviour. On the recording you hear the tenant screaming and yelling and her behaviour was out of control. It took six police officers to bring the situation under control.

The tenant's evidence is the tenancy should not end for this incident as she was not charged with a criminal offence. However, in this case the tenant's behaviour was violent and the tenant did significantly and unreasonably disturb other occupants and the landlord.

Therefore, I dismiss the tenant's application to cancel the one month notice to end tenancy.

As the tenant's application is dismissed and the landlord requested an order of possession at the hearing, pursuant to section 55 of the Act, I must grant this request.

Section 55(1) of the Act states: Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, (a) the landlord makes an oral request for an order of possession, and (b) the director dismisses the tenant's application or upholds the landlord's notice.

Section 53 of the Act stipulates that if the effective date stated in a notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation.

The evidence of the parties was the notice was issued on March 8, 2012 and the effective date in the notice was April 8, 2012. The landlord did not provide the tenant with one month notice as required by the Act.

As this was a month to month agreement, commencing on the first of the month the earliest time the landlord could have legally ended the tenancy was April 30, 2012. As I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession **effective April 30, 2012 at 1:00 P.M.**

This order must be served on the tenant and may be filed in the Supreme Court.

Conclusion

The tenant's application to cancel a one month notice to end tenancy for cause is dismissed. The landlord is granted an order of possession.

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 2, 2012.

Residential Tenancy Branch