



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 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; his two advocates; the landlord's agent; and his witness.

The parties agreed the tenant failed to serve the landlord with his evidence until June 13, 2012, outside of the requirements of the Residential Tenancy Rules of Procedure that require at least 5 business days, prior to the hearing. As such, I confirmed I would not consider the two letters submitted.

During the hearing the landlord introduced an event outlined in one of the letters provided by the tenant and as such the landlord agreed to allow consideration of that letter.

In addition, during the hearing the landlord 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, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

If the tenant is unsuccessful in his Application seeking to cancel the 1 Month to End Tenancy for Cause it must be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the *Act*.

Background and Evidence

The parties agree the tenancy began as a month to month tenancy in January 2009 with a current monthly rent of \$527.87.

Both parties provided a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on May 23, 2012 with an effective vacancy date of July 1, 2012 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk.

The landlord testified that this tenant and another tenant got into an altercation in the elevator of the residential property and as a result both tenants required hospital treatment and there was police involvement.

Both parties acknowledge that the other tenant currently has charges against him as a result of this altercation and cannot return to live in the residential property. The tenant testified there are no charges against him in relation to this incident.

The landlord testified that just because one of the parties was charged there is not conclusive evidence as to who caused or instigated the altercation but because of the police involvement and the fact that both tenants had to attend hospital the landlord testified that both parties can no longer live in the residential property.

The landlord testified that there have been difficulties with this tenant for a long time including verbal threats made by the tenant against the agent in the hearing but that because there were no witnesses to these there was no follow up.

The landlord's witness testified that about a year ago she heard the tenant yelling at another tenant from her floor so she went down to his floor. She stated that when she got there the tenant looked like he was going to hit the other person and he told her to stay out of it so she reported it to the desk clerk. The witness stated she was unaware of any action taken by the landlord.

The landlord referred to the letter submitted by the tenant from another tenant who states he is a friend of the tenant despite getting into a fight with the tenant that had to be broken up by the landlord's agent. The landlord's agent testified that he broke up the fight and told them to go to their rooms. The landlord did not indicate any additional intervention was required.

The tenant submits the landlord has failed to provide sufficient evidence to establish the tenant was the cause of the altercation of May 15, 2012. Further, the tenant submits despite the landlord's testimony that there have been other altercations the examples provided are not relevant to this notice either because they have occurred after the notice was issued or far too long ago to be considered in this action.

In regard to the incident the landlord stated occurred after the Notice was issued, the tenant's advocate submits that she isn't even sure it is a significant incident, of any kind.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk;

In the case before me, I find, based on the testimony of both parties in relation to the events of May 15, 2012, the landlord has failed to establish the tenant has caused, through his actions, any of the stated causes sufficient to end the tenancy.

While others may have been disturbed or had jeopardized safety or the landlord's property was put at risk, as per the landlord's testimony there is no corroborating evidence of who instigated the altercation.

However, I accept the position of the tenant that based on the balance of probabilities the police are not likely to charge only one party in an incident if there was sufficient evidence to show that both parties caused the event.

In relation to the landlord's assertion that this is part of a disturbing history of this tenancy, I find the landlord has not provided sufficient or any warning to the tenant of the consequences of any incidents throughout the tenancy.

For example, despite breaking up a fight with another tenant, from the landlord's own testimony, he only told them to break it up and go to their rooms – he did not follow up

to either of those tenants with a warning that continued behaviour of that nature could result in the ending of the tenancy.

Conclusion

For the reasons noted above, I find the landlord has failed to establish sufficient cause to end the tenancy and I grant the tenant's Application to cancel the 1 Month Notice to End Tenancy issued on May 23, 2012. I therefore dismiss the landlord's verbal request for an order of possession.

However, I caution the tenant that he should consider that he has been sufficiently warned that the landlord make take action to end the tenancy if other altercations occur.

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: June 18, 2012.

Residential Tenancy Branch