



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC

Introduction

This matter dealt with an application by the Tenant for an Order that the Landlord comply with the Act or tenancy agreement and for compensation for damage or loss under the Act or tenancy agreement.

Issue(s) to be Decided

1. Is the Landlord in breach of the Act or tenancy agreement?
2. Is the Tenant entitled to compensation?

Background and Evidence

This tenancy started approximately 5 years ago. The Tenant said approximately one year ago, another resident of the rental property (C.H.) entered his suite without his consent, refused to leave and physically assaulted him. The Tenant said he reported the assault in writing to the owner of the property however nothing was done about it. The Tenant said C.H. again physically assaulted him on June 7, 2012 and at that time he reported it to the police. The Tenant said the police would not lay charges against C.H. because there were again no witnesses to it other than C.H.'s spouse who also assaulted him. The Tenant said he also reported this incident to the Landlord. Three days later, the Tenant said C.H. blocked his path as he approached his residence and then physically assaulted him again. The Tenant said he asked some people in the area to contact the police but by the time the police arrived, there were no witnesses.

The Tenant said he does not feel safe in the rental property with C.H. there. The Tenant said C.H. is very confrontational and aggressive especially when he is under the influence of alcohol. Consequently, the Tenant sought an Order compelling the Landlord to evict C.H. In the alternative, the Tenant sought compensation equal to one month's rent for a breach of his right to quiet enjoyment due to the Landlord's failure to act.

The Landlord is a son of the owner of the rental property. The Landlord said although he was aware of the 1st reported assault on the Tenant, there was nothing he could do about it because his father had sole decision making authority at the time and did not

think it was necessary to evict C.H. The Landlord said he has recently received a Committee Order for his father's financial affairs so he is now authorized to make decisions about the rental property. The Landlord said he is prepared to take steps to remove C.H. from the rental property.

Analysis

There is no authority under the Act for the director to Order a Landlord to evict a tenant. If a Landlord feels there are grounds (as set out under s. 47 of the Act) to end a tenancy, then a Landlord must serve a tenant with a One Month Notice to End Tenancy for Cause stating the reason for wanting to end the tenancy. If the tenant thinks the Notice is not justified then within 10 days of being served with the Notice, the tenant must apply for dispute resolution to cancel the Notice. At that time, a hearing will be conducted to determine if there are grounds to uphold the Notice or not. If a tenant does not apply to dispute the Notice within 10 days of receiving it, then the Landlord may apply for an Order of Possession to enforce the Notice.

Furthermore, C.H. was not given notice of this hearing or the allegations being made against him, therefore it would not be appropriate for me to make any findings about his conduct in the absence of any evidence from him. As a result, the Tenant's application for an Order that the Landlord comply with the Act or tenancy agreement is dismissed without leave to reapply.

The Tenant also sought compensation for his loss of quiet enjoyment. The Landlord argued that there was little he could do until recently when he received a Committee Order authorizing him to handle the affairs of the rental property on his father's behalf. The Landlord said he also was under the mistaken belief that he could not evict C.H. until he was ordered by the director to do so. The Landlord said he now understands the proper procedure and is willing to serve C.H. with a One Month Notice.

The definition of a Landlord under s. 1 of the Act includes "the heirs, assigns, personal representatives and successors in title to a person" such as the owner of the rental property. Consequently, if a Tenant suffers damages due to a breach of the Act by a former Landlord (or owner), the personal representative of that person who takes over the affairs of the Landlord may still be responsible for the former Landlord's breach even though he was not acting at the time. In this case, the Parties agreed to attempt to resolve this issue on their own and as a result, the Tenant's application for compensation is dismissed with leave to reapply.

Conclusion

The Tenant's application for an Order that the Landlord comply with the Act or tenancy agreement is dismissed without leave to reapply. The Tenant's application for compensation is dismissed with leave to reapply.

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: July 10, 2012.

Residential Tenancy Branch