



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that the Tenant has had a tenancy agreement for this rental unit for several years and that he is required to pay rent by the first day of each month.

The Landlord and the Tenant agree a One Month Notice to End Tenancy for Cause was personally served to the Tenant, although neither party was certain when it was served in October of 2012. The Notice declared that the Tenant must vacate the rental unit by November 30, 2012. The reason cited for ending the tenancy is that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord.

The Agent for the Landlord and the Tenant agree that on September 26, 2012 the maintenance manager, who is 75 years old, intervened when another occupant was cutting branches from a tree on the residential property; that the Tenant was present during the interaction between the maintenance manager and the other occupant; that the maintenance manager told the Tenant to stay out of the discussion; that the Tenant pushed the maintenance manager to the ground; that the maintenance manager hurt his elbow; that the maintenance manager was transported to hospital; that the incident was reported to the police; and that the Tenant was charged with assault.

The Tenant stated that he is 59 years old; that he was inebriated at the time of the altercation on September 26, 2012; that the maintenance manager was swearing and cursing; and that he regrets pushing the maintenance manager.

The Witness for the Landlord stated that on September 26, 2012 she observed the Tenant push the maintenance manager as the maintenance manager was turning to walk away; that she observed the maintenance manager fall to the ground; that she was far enough away that she could not hear normal conversation; and that she did not overhear the maintenance manager yelling or cursing.

The Agent for the Landlord and the Tenant agree that in August of 2012 the maintenance manager and the Agent for the Landlord was inspecting the Tenant's rental unit; that the maintenance manager commented about the condition of the rental unit; and that the Tenant shoved the maintenance manager, who did not fall. The Tenant stated that he only vaguely recalls this incident; that the maintenance manager made a "stupid accusation" which "pissed me off", so he "gave him a shove".

Analysis

Section 47(1)(d)(ii) of the *Act* authorizes a landlord to end a tenancy if a tenant seriously jeopardizes the health or safety or lawful right or interest of the landlord. I find that the Landlord has provided sufficient evidence to show that the Tenant jeopardized the health and/or safety of the maintenance manager when he pushed him to the ground on September 26, 2012. In reaching this conclusion I find that the assault was not justified, as the manager was simply attempting to protect the Landlord's property. Even if the maintenance manager had used profanities during his discussions with the Tenant, I find that the Tenant had no right to push the maintenance manager as he was preparing to leave the area.

In determining that the tenancy should end, I was influenced by the following aggravating factors:

- The maintenance manager received injuries that warranted medical attention
- The assault was deemed serious enough for the police to lay charges
- The maintenance manager is significantly older than the Tenant
- The Tenant has a history of violence towards the maintenance manager.

Conclusion

As I have determined that the Landlord has the right to end this tenancy, pursuant to section 47(1)(d)(ii) of the *Act*, I dismiss the Tenant's application to set aside the One Month Notice to End Tenancy for Cause. I find that this tenancy will end on November 30, 2012 in accordance with that Notice.

I note that the Landlord did not request an Order of Possession at the hearing.

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: November 14, 2012.

Residential Tenancy Branch