Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING

Dispute Codes CNC

Introduction

This matter was originally heard in a Dispute Resolution Proceeding on December 6, 2012 on the tenant's application to have set aside a Notice to End Tenancy for cause served on November 2, 2012 and setting an end of tenancy date of December 31, 2012.

In the result, the arbitrator found that the landlord had not met the burden of proof sufficiently to warrant ending the tenancy.

The landlord made application for consideration for a Review Hearing on December 11, 2012 which was granted by a decision of December 18, 2012 on the grounds that the original decision had been obtained on the basis of false evidence given by the tenant. The tenant did not attend but was represented by a friend.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession in support of the Notice to End Tenancy of November 2, 2012?

Background and Evidence

The Notice to End Tenancy had been served on the tenant on November 2, 2012 after an incident on November 1, 2012 in which the landlord claimed that the tenant had struck the building manager in the face during a confrontation near the building's mail box area.

In the previous hearing, the Arbitrator had heard evidence from the tenant that he was being verbally assailed by the manager and that her spittle was spraying on him. He said that he had merely raised his hand to avoid it and to block an anticipated slap and had inadvertently pushed her.

In the application for Review Consideration, the landlord submitted:

1. A copy of the video surveillance tape of the incident;;

2. A copy of a note the building manager's physician dated December 10, 2012 stating that that the doctor was treating the building manager for a facial fracture and concussion;

3. A letter from a witness dated December 7, 2012 stating he had been in the lobby when he saw the tenant strike the building manager, "...with full force in the face."

4. A letter dated November 30, 2012 from WorkSafe BC to the tenant advising that her claim for work injuries incurred on November 1, 2012 had been accepted under the *Workers Compensation Act* and that she was entitled to wage loss and health care benefits.

The Arbitrator considering the application for the review hearing found that all of that evidence would have been available at the original hearing and did not qualify for a review hearing on the grounds of new and relevant evidence. However, she did find that it established that the tenant had given false evidence at the original hearing in testifying that he had simply raised his hand to ward off spittle and to block an anticipated slap.

The tenant's representative stated that she had none of the evidence in question. She stated that the tenant had received the video on a compact disc on January 6, 2012 and he had forwarded it to his lawyer who had been unable to play it on his computer. The landlord's legal counsel stated that he had tried the day before the hearing to contact with the tenant's legal counsel to verify that he had seen the video, but the two had been unable to connect.

The landlord had not provided the tenant with the documentary evidence because he had in error interpreted the review consideration decision, when it declined the review hearing on the basis of new and relevant evidence to mean that the evidence could be considered at the review hearing. In fact, it only meant that the "new and relevant" evidence did not constitute grounds to grant the review hearing, not that it was precluded from the review hearing which was granted on grounds that the original decision was granted on fraudulent representation.

Therefore, while I had previewed the video and have copies of the documentary evidence referred to, I have relied only on the oral evidence as heard by the tenant's representative and as outlined in the decision granting the review hearing.

The landlord gave further evidence that, at the time of the present hearing, some two months and three weeks after the incident in question, the building manager had not yet been able to return to work and her return was thought to be another three weeks off.

The tenant has been charged with criminal assault and has been served with a restraining order to stay away from the building manager.

The tenant's representative gave evidence that the tenant is suffering from multiple serious health challenges but has been searching for new accommodation.

She read a letter from another tenant expressing relief that the subject tenant had not been evicted following the original hearing and stating approval of that his tenancy would be continuing.

However, the tenant's representative also noted the tenant had suffered some derision from other tenants which contributed to his preference to relocate.

Analysis

The Notice to End tenancy of November 2, 2012 issued under section 47 of the *Act,* to paraphrase, cited:

- Significant interference with another occupant or the landlord;
- Serious jeopardy of the health, safety or lawful right of another occupant or the landlord;
- Engaging in an illegal activity adverse to the safety or well being of an occupant or landlord and jeopardized a lawful right of another occupant or the landlord.

Taking into account a photograph of the building manager's badly bruised and swollen face taken shortly after the incident, the witness statement, the physician's statement, the WorkSafe BC letter and the fact that a restraining order has been issued and criminal assault charges have been filed, I find on preponderance of evidence that the tenant has breached section 47 of the *Act*.

Therefore, I declined to set aside the Notice to End Tenancy. On hearing that determination, the landlord's legal counsel requested, and I find he is entitled to an Order of Possession.

The landlord requested some latitude with respect to the end date of the notice in order to be able to consult with the board of directors and to as much as possible accommodate the needs of the tenant.

While I had initially considered that the seven-day Order of Possession requested by the landlord was appropriate, on reflecting on the concerns of possible retribution by the tenant expressed by the landlord, I have decided a two day Order would be more appropriate. The landlord still has the desired flexibility to delay service the Order but may act more quickly if circumstances necessitate a more rapid end to the tenancy.

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenant.

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: January 22, 2013

Residential Tenancy Branch