



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 10, 2013, by the Tenant to cancel a notice to end tenancy issued for cause and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy, issued January 8, 2013, be upheld or cancelled?
2. If cancelled, did the Landlord appear at the teleconference hearing and make an oral request for an Order of Possession?

Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: a 1 Month Notice to end tenancy issued January 8, 2013.

The Landlord submitted documentary evidence which included, among other things, copies of: warning letters issued to the Tenant June 23, 2010, April 6, 2011, April 19, 2012, August 21, 2012, January 7, 2013; numerous incident reports about the Tenant's behaviour between 2010 and 2013; and the 1 Month Notice issued January 8, 2013.

The parties confirmed they entered into a month to month tenancy that began on January 1, 2010. Rent is currently payable on the first of each month in the subsidized

amount of \$659.00. On December 8, 2009, the Tenant paid \$308.00 as the security deposit.

The Landlord affirmed that he met with the Tenant early last week to discuss the Notice to end tenancy. At that time he told the Tenant that he would be willing to withdraw the Notice to end tenancy if she was able to provide him proof that she was getting help with her alcoholism problem. He said she informed him that she was under a doctor's care and her doctor was aware of her drinking. The Landlord confirmed that he told her that if she did not seek assistance with her alcoholism then they would proceed with ending her tenancy.

The Landlord summarized their documentary evidence in stating that problems arise when the Tenant drinks and goes out of her rental unit into the hallways as she is scaring the other tenants. He noted that the building is primarily occupied by seniors or disabled adults and the Tenant is scarring the other tenants with her aggressive drunken behaviour.

The Landlord asked the Tenant if she thought he had enough grounds to end her tenancy; to which she answered "no". He stated that they would not be here today if the Tenant kept to herself inside her apartment but unfortunately she does not and when she drinks she is basically an angry drunk.

The Caretaker advised that she has been employed at this building for two years and she too is afraid of the Tenant when she has been drinking. She said she can tell if the Tenant has been drinking by the scowl on her face so when she sees the scowl she avoids the Tenant. She stated that the Tenant spends a lot of time outside of her apartment, roaming in the common areas, and she tends to follow the Caretaker around, right up to when she gets inside her car. She likened the behaviour to being stalked so now she tries to avoid the Tenant.

The Caretaker stated that she has received numerous complaints from other staff and tenants that the Tenant has been verbally abusive towards them. She said that when the Tenant is drunk she becomes aggressive and abrupt. She noted that this situation is to the point that the Tenant is interfering with the quiet enjoyment of other tenants and is causing the employees to feel threatened and anxious. The most recent incident with the Tenant was early in January 2013 when they were taking down the Christmas lights. She pointed to the incident reports which indicated the Tenant was drunk and verbally abusive to her and another tenant.

The Tenant confirmed receipt of the 1 Month Notice by registered mail. She acknowledged that she smokes and drinks. She confirmed that she walks the hallways to get her muscles moving and to meet the other tenants. She stated that she is under medical care and her doctor is aware of her drinking. She submitted that she has several medical conditions, including a broken leg, and that she finds it very stressful to live in her current building.

When speaking about the incident of January 8, 2013, the Tenant stated that she “snapped” at the Caretaker and another tenant. She confirmed that she had consumed alcohol that day and argued that people are afraid of her because she speaks with her hands. She recalls being in the elevator with the other female tenant but said she did take it to the level of snapping with her. She acknowledged that she snaps at people for other reasons, such as when they refer to her as a “him” and at those times she said she regrets not walking away.

The Tenant was pointed to the five warning letters provided in the Landlord’s evidence and she confirmed receiving each notice shortly after they were issued. She also confirmed that each notice spoke about her inappropriate behaviour. She confirmed that she drinks alcohol daily but argued that she only ever has two drinks. She confirmed that she does not believe it is such a problem that she should have to move or seek help for alcoholics.

In closing, the Landlord advised that this situation is not pleasant for them as they are in the business of housing people. However, in this case the Tenant is causing his employees and other tenants to feel threatened and unsafe which leaves them no alternative but to evict her. The Landlord requested that the 1 Month Notice be upheld and they be issued an Order of Possession.

Analysis

Upon review of the 1 Month Notice to end tenancy issued January 8, 2013, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenant in a manner that complies with the Act.

The 1 Month Notice was issued pursuant to Section 47(1) of the Act for the following reason:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonable disturbed another occupant or the landlord

Upon consideration of the evidence I find the Landlord has proven that the Tenant’s behaviour, while intoxicated, is negatively affecting the quiet enjoyment of other tenants and the Landlord’s employees. Furthermore, I find the Tenant has been given ample written warnings to rectify the situation and yet she continues to roam the halls and common areas after consuming alcohol. She was given one last chance to allow her to stay if she seeks assistance in managing her alcoholism; however, the Tenant denied needing assistance and argued that she was under her doctor’s care.

Based on the forgoing, I find the Landlord has proven that the Tenant is significantly interfering with and unreasonably disturbing other tenants and the Landlord’s employees. Therefore, I dismiss the Tenant’s claim to cancel the Notice.

The Tenant has not been successful with her application; therefore, she must bear the burden of the filing fee.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Accordingly I award the Landlord an Order of Possession effective **February 28, 2013**, the effective date of the Notice.

Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

The Landlord's decision will be accompanied by an Order of Possession effective **February 28, 2013**. This Order is legally binding and must be served upon the Tenant.

This decision is legally binding and 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: February 04, 2013

Residential Tenancy Branch

