



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 1 Month Notice to End Tenancy for Cause, issued on June 1, 2013.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Should the notice to end tenancy issued on June 1, 2013, be cancelled?

Background and Evidence

The parties agree that a one month notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on June 30, 2013.

The reason stated in the notice to end tenancy was that the tenant has:

- Put the landlord's property at significant risk,

- Engage in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord testified on May 24, 2013, the toilet in the tenant's unit overflowed and that the tenant demanded that they attend the rental unit immediately to shut the water off. The landlord stated while they were at the unit cleaning up the water, the tenant was rude and displaying inappropriate behavior and made it very difficult to work.

The landlord testified on May 27, 2013, there was another incident of the toilet overflowing in the rental unit. The landlord stated the plumber decided to completely remove the toilet as there was something stuck in it. The landlord stated when the plumber was reinstalling the toilet the tenant walked past her in the hallway pressing her body against hers. The landlord stated that she said to the tenant all you need to do is ask to get by. The landlord stated the tenant then turned around and assaulted her physically by pushing her with both hands.

The landlord testified the police attended the rental unit. The landlord stated she did not want charges laid against the tenant. Filed in evidence is police department – narrative.

The narrative, in part reads,

“...Minor push only, com did not want any further action...”

[Reproduced as written]

The witness statement of the plumber filed in evidence reads in part,

“(tenant) walked by (landlord), who was standing in the hallway and pushed her with her body! (landlord) asked her politely not to push and just say “excuse me” if she needs her to move. (tenant) became even more aggressive and physically pushed (landlord) with both hands and slammed her bedroom door!”

[Reproduced as written]

The tenant testified that she had taken a double dose of her medication in error and was acting out of character. The tenant denied pushing the landlord but agreed that she pushed past the landlord going down the hallway.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- Engage in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

In this case, the tenant admits she had taken a double dose of her medication and that she was acting out of character at the time of the incident. The tenant admits pushing past the landlord in the hallway. The evidence of the landlord was that the tenant after that incident then assaulted her by pushing her with both hands. The assault by pushing is supported by the witness statement and the police narrative.

As a result, I find based on the balance of probability that the tenant engaged in an illegal activity, by pushing the landlord, which affected the physical well-being of the landlord. As a result, I find that the notice issued by the landlord on June 1, 2013, is a valid notice under the Act.

Therefore, I dismiss the tenant's application to cancel the 1 Month Notice to End Tenancy for Cause, issued on June 1, 2013. The effective vacancy date of the notice was June 30, 2013, which does not comply with section 47 (2) of the Act. Therefore that date is automatically corrected pursuant to section 53 of the Act to July 31, 2013, as that is the earliest date that complies with the section.

As the tenant's application is dismissed and the landlord has made an application for an order of possession, pursuant to section 55 of the Act, I must grant this request. Section 55(1) of the Act states: Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, (a) the landlord makes an oral request for an order of possession, and (b) the director dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **JULY 31, 2013, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court

Conclusion

The tenant's application to cancel a 1 Month Notice to End Tenancy for Cause, issued on June 1, 2013 is dismissed.

The landlord is granted an order of possession

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 05, 2013

Residential Tenancy Branch