



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gateway Property M.C.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC, SS, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for more time to dispute a notice to end tenancy; for an order cancelling a notice to end tenancy for cause; for an order permitting the tenant to serve documents in another way than provided in the *Act*; and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord company attended the hearing and each gave affirmed testimony. The landlord also called one witness who gave affirmed testimony. The tenant provided evidentiary material in advance of the hearing. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, the tenant advised that the application for serving documents was not intended to be an application that the tenant be permitted to serve documents in another way than provided in the *Act*, but was intended to apply for an order that documents served to the tenant by the landlord be served at the place that the tenant is currently staying at, and not at the rental unit. The *Residential Tenancy Act* provides for an opportunity for a party to apply for an order permitting that party to substitutionally serve another party, and in the circumstances, I am satisfied that the tenant did not intend to make that application, and I therefore dismiss it. The tenant provided an address for service on the tenant's application, and I direct the landlord to use that address for service of any documentation.

Also, during the course of the hearing, the parties agreed that the tenant was served with the notice to end tenancy by placing it on the door of the rental unit on July 31, 2014. The *Act* states that service in such a manner is deemed to have been served 3 days later, which I find is August 3, 2014. The tenant made the application for dispute resolution disputing the notice on August 6, 2014. The *Act* requires a tenant to dispute such a notice within 10 days, and I find that the tenant has done so, and no further time is required. Therefore, that portion of the tenant's application is also dismissed.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the landlord established that the notice to end tenancy has been issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this tenancy began about 6 years ago. The tenant is currently not residing in the rental unit but is still paying rent, and there are no rental arrears.

The landlord's agent further testified that on July 30, 2014 the landlord's agents received a complaint from another female tenant in the rental complex that she had been assaulted by the tenant, the police attended, and the tenant was arrested. Since that date, the tenant has not returned to the rental unit, however other female tenants have advised the landlord that if the tenant returns, they will move out.

There have been no other complaints about the tenant since the beginning of the tenancy. The landlord caused the tenant to be served with a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided for this hearing, by posting it to the door of the rental unit on July 31, 2014. The notice is dated July 31, 2014 and contains an expected date of vacancy of August 31, 2014. The reasons for issuing the notice are: "Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;" and, "Tenant has engaged 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 previously applied for an early end to the tenancy, which was dismissed at arbitration.

The landlord's witness testified that the night before serving the notice to end tenancy, around 10:00 p.m. the witness received a phone call from a female tenant indicating that the police had been at the rental complex, the tenant had assaulted the female tenant, and the tenant had been arrested. She requested that the witness go to her rental unit, however they continued to talk on the phone for 10 or 15 minutes and she agreed that she was okay and that he didn't need to attend. The witness did not attend at her rental unit.

The witness also testified there are 11 suites in the rental complex and there have been no complaints by other occupants about the tenant. However, since this incident 1 tenant has told the witness that he does not feel comfortable, and the person does not know what happened and everyone has only heard the alleged victim's side of the story, so they don't feel safe.

The tenant testified that the allegations contained in the charges, which are currently before the Courts are not true. The tenant did not specify what exactly the charges are, but testified that he was arrested and was released the next day upon giving an undertaking to a judge or a justice with certain conditions. Those conditions include that the tenant is not to attend within a 2 block radius of the rental complex and must have no contact with the alleged victim, and may attend the rental unit on one occasion only to retrieve personal belongings. The tenant is complying with all conditions, has no intention of breaching any of the conditions, has continued to pay rent, and the allegations are not yet scheduled for trial. The tenant is currently staying elsewhere and a relative attends the rental unit regularly to ensure that it is safe.

The tenant further testified that what the alleged victim has told other occupants of the rental unit is unknown to him because he hasn't returned, and other occupants are only hearing her side of the story. The tenant is going to go through the process and abide by all conditions and wants a home to go to when the trial has concluded.

The parties agree that there is no animosity between the landlord's agents and the tenant, and no previous complaints have been received.

Analysis

Where a tenant disputes a notice to end tenancy, the onus is on the landlord to establish that the notice was issued in accordance with the *Residential Tenancy Act*, which may include the reasons for issuing it. In this case, the landlord issued the notice to end tenancy based on allegations by another tenant that the tenant assaulted the other tenant. The landlord's agents have testified that the tenancy has been in place for about 6 years and there have been no complaints from other tenants about the tenant in the past, and the tenant is currently before the courts dealing with the allegation. The tenant has not yet been to trial, and has not been convicted of any offence. A person charged with a criminal offence is deemed to be innocent until proved guilty. The tenant disputes the allegations, and therefore, I cannot be satisfied that the tenant has engaged in any criminal activity.

With respect to the other reason for issuing the notice, the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, the tenant denies that the incident took place as described by the alleged victim and the landlord's agents. The landlord's agents were not there and had no direct information, other than the witness' testimony that the alleged victim called him and they had a 10 or 15 minute conversation. During that conversation the alleged victim had asked the witness to attend at her rental unit, then advised him that she was okay, and ultimately agreed that he didn't need to attend. I have no evidence before me that she sounded distraught, or that she may have been crying, or any evidence that the allegations are true or that the tenant should be ordered to move out. The tenant is abiding by the conditions imposed by the Courts and there are no rental arrears.

In the circumstances, I find that the landlord has failed to establish that the tenant has engaged in any criminal activity or has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and the notice to end tenancy is hereby cancelled.

Since the tenant has been partially successful with the application, I order the tenant be permitted to reduce rent for the next month by \$50.00 as recovery of the filing fee.

Conclusion

For the reasons set out above, the notice to end tenancy is hereby cancelled.

The tenant's application for more time to dispute the notice to end tenancy is dismissed.

The tenant's application for an order permitting the tenant to serve documents in another way is hereby dismissed, and I direct the landlord to serve or deliver documents at the address contained in the Tenant's Application for Dispute Resolution and not at the rental unit until the tenant advises otherwise.

I hereby order the tenant be permitted to reduce next month's rent by \$50.00 as recovery of the filing fee.

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: October 10, 2014

Residential Tenancy Branch

