



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated October 28, 2014 ("1 Month Notice"), pursuant to section 47;

The tenant, the landlord DS and the landlord's building manager agent GM (individually "the landlord DS" and "the landlord GM" and collectively "landlord") attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The tenant briefly disconnected from the hearing from 3:06 p.m. to 3:12 p.m. and again disconnected from the hearing one minute early at 3:32 p.m., due to telephone battery problems.

The landlord called two witnesses, DE ("DE") and CM ("CM"), who provided sworn testimony. Both parties were given an opportunity to ask questions and to cross-examine both witnesses.

The landlord testified that the tenant was served personally with the 1 Month Notice on October 28, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the 1 Month Notice, as outlined above.

The tenant testified that the landlord was served with the Application for Dispute Resolution hearing package ("Application") on November 6, 2014, by way of registered mail. She provided a tracking number orally during the hearing. The landlord acknowledged receipt of the Application. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the Application, as outlined above.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled?

Background and Evidence

The landlord testified that this periodic tenancy began on December 1, 2008 and continues to present. Monthly Rent is payable in the amount of \$493.00 on the first day of each month. A security deposit was paid by the tenant for this tenancy.

The tenant entered into written evidence a copy of the 1 Month Notice. In that notice, requiring the tenant to end this tenancy by November 28, 2014, the landlord cited the following reasons for the issuance of the notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

In accordance with subsection 47(4) of the *Act*, the tenant must file her application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on October 28, 2014. The tenant filed her application for dispute resolution on November 5, 2014. Accordingly, the tenant filed within the ten day limit under the *Act*.

The landlord GM mentioned that the tenant was overbearing, in that she was overly talkative, arrogant and condescending towards other tenants. She stated that other tenants took action against this tenant, including throwing paint on her door.

The landlord GM stated that her safety was jeopardized by the tenant on October 2, 2014. This incident arose because the tenant was banging on the door where the landlord GM was completing work, telling her to stop doing work because it was too noisy and it was around 8:30 p.m. The landlord GM stated that she pushed the tenant out of her rental unit causing the tenant to fall on the floor, because the tenant tried to grab her strap.

The witness DE lives across the hallway from the tenant's rental unit. He testified that the tenant entered his rental unit without permission and threatened him with a stick on May 28, 2014. The tenant testified that an unknown woman knocked on her door that

night while she was sleeping and she thought the woman needed help or a telephone to use, as it was late at night and many people do not have their own telephones in the building. She opened her door and DE appeared, as he lives across the hallway from the tenant, and he was very angry. The tenant admitted that she kept a stick to defend herself, as she has been hurt by other tenants before. DE testified that he took the stick from the tenant, threw it in the hallway, pushed the tenant against the wall and closed the door. The tenant stated that she broke her arm when DE pushed her against the fire extinguisher in the hallway, and she received medical attention at the hospital immediately after. When DE stated that the tenant grabbed his throat, he indicated that he was then able to remove the tenant from his unit and shut the door. The tenant testified that she did not try to choke DE.

The landlord indicated that oral warnings were made to the tenant in her first year at the rental unit, 2008. The landlord further stated that written warnings were given to the tenant in previous years, as well as in June/July 2014, but none were produced as evidence for this hearing. Additionally, the landlord stated that the warnings were in relation to the tenant's own safety and mental health concerns. The incident in June/July 2014, according to the landlord, involved the tenant being in mental distress, a call to the police to assist her, and her door being kicked in by the police when the tenant did not answer.

The witness CM testified that she used to live on the second floor directly below the tenant, from June 2014, when she moved into the rental building, until October 2014. An incident occurred in August 2014 when the tenant grabbed her 2 year-old son's wrist and took a bite out of his sandwich. Her son cried and the sandwich had to be thrown away. CM also testified that the tenant complained that her son was stomping and running in his rental unit. She indicated that this occurred at reasonable hours of the morning and the tenant would stomp in her own rental unit in response. CM stated that she moved to the other side of the rental building recently in October 2014, due to the tenant's complaints about her son. The tenant testified that she likes CM and her son and she eventually got used to the stomping from him, which would happen at any time of the day. She had suggested to CM to take her son outside to run around and stomp.

The tenant testified that she tries to stay away from many tenants because they have drug and alcohol issues. She testified that she has been abused and assaulted by other tenants for avoiding them. She indicated that she has not physically hurt anyone in the rental building.

Analysis

While I have turned my mind to the 1 Month Notice and the testimony of both parties and the two witnesses, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Where a tenant applies to dispute a 1 Month Notice within the required time limits, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based. The landlord did not provide any documentary evidence for this hearing.

Serious jeopardy to health, safety or lawful right of another occupant or landlord

The landlord DS and the two witnesses did not provide any medical, documentary or other evidence that their own health or safety was "seriously jeopardized" by the tenant as per Section 47(1)(d)(ii). I find that the landlord has not shown that the lawful rights of the landlord or any other occupants were "seriously jeopardized," as no evidence was provided regarding this claim.

The landlord DS did not provide any testimony or evidence that his own health or safety was "seriously jeopardized." The incident with the landlord GM, where she pushed the tenant out of her rental unit, was likely a safety issue for the tenant, not the landlord GM. The landlord DS and the landlord GM were not even present during the incidents with the witnesses, DE and CM, and only have knowledge of those events from being told by these witnesses.

The landlord indicated that other tenants were afraid of the tenant and moved out of the building. The landlord did not provide any corroborating documentary or witness testimony to support this contention. In fact, the witnesses at this hearing provided information that contradicts the landlord's position. CM testified that she moved to a different unit so as not to disturb the tenant but that she had no desire to vacate the building. DE testified that he was not afraid for his own safety around the tenant.

The witness DE stated that he was not afraid for his safety, he was not injured by the tenant, and he did not press any charges after calling the police regarding the incident in May 2014. No police officers testified at this hearing and no police report was produced as evidence. DE even stated that he used to refer to the tenant as his "wife." Therefore, I find that DE's health and safety was not "seriously jeopardized" during this one single incident.

The landlord waited 5 months after the incident with DE, before issuing a 1 Month Notice against the tenant. Oral warnings from 2008 are too far removed in time in relation to DE's incident in 2014. The event in June/July 2014, where the tenant's own door was kicked in during her mental distress event, affected the tenant personally, not the landlord or other occupants. If the landlord's or other occupants' health and safety were at risk, or there was concern about significant interference or unreasonable disturbance towards other occupants or the landlord, appropriate direct action should have been taken as soon as possible by the landlord.

I find that CM's health and safety was not "seriously jeopardized" during the one single incident where she stated that the tenant grabbed her son's wrist. She provided no medical or other documentary information to show that medical attention was sought or that injuries occurred to her son. CM did not vacate the rental building and admitted that she moved to a different unit because of the tenant's complaints against her son.

Significant Interference or unreasonable disturbance of another occupant or landlord

I find that the landlord and the two witnesses did not provide sufficient evidence to demonstrate that the tenant "significantly interfered with" or "unreasonably disturbed" them, as per Section 47(1)(d)(i). The landlord DS did not testify that he was personally affected by any of the above incidents, as he was not present. He has simply heard reports from the landlord GM and other tenants about various incidents involving the tenant. The landlord DS testified that he did not want to deal with the tenant anymore because of the above complaints. This is not a significant interference or unreasonable disturbance to the landlord DS personally. As noted above, the one incident involving the landlord GM, affected the tenant's safety more than the landlord GM's, and therefore, does not constitute significant interference or unreasonable disturbance to the landlord GM personally.

As noted above, the incident with DE was one single occurrence. DE even admitted to pushing the tenant during the incident. He did not provide any evidence that he missed time from work or sought medical attention due to this incident. There has been no history or pattern of unreasonable disturbance or significant interference by the tenant towards DE. In fact, the tenant stated that DE physically harmed her, causing her to seek medical attention after the incident.

As noted above, the incident with CM was one single occurrence that involved her son, and not her personally. CM also testified that the tenant's stomping would bother her a few times between July and October 2014, when she was sleeping. She did not provide any evidence that she missed time from work due to lack of sleep. She stated that she

is not leaving the building because of the tenant. There has been no history or pattern of unreasonable disturbance or significant interference by the tenant towards CM. Both the tenant and CM agreed that complaints were made about CM's son, rather than the tenant.

I am not satisfied that the landlord has met the onus, on a balance of probabilities, to end this tenancy for cause, based on the reasons in Section 47(1)(d)(i) or (ii).

For the reasons outlined above, I allow the tenant's application to cancel the 1 Month Notice, dated October 28, 2014. The 1 Month Notice is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice, dated October 28, 2014. The 1 Month Notice is hereby cancelled and of no force and effect. This tenancy continues.

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: December 4, 2014

Residential Tenancy Branch

