



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FAIRFIELD HOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes 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 (the “notice”) issued on October 17, 2014.

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 to be Decided

Should the notice to end tenancy issued on October 17, 2014, be cancelled?

Background and Evidence

The parties agreed 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 November 17, 2014.

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

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

The landlord's witness DW testified that he was working on the night of October 15, 2014, when an occupant from the rental building approached him outside the building and indicated that he was upset because of the ongoing excessive noise coming from the tenant's rental unit.

DW testified that the occupant went back into the building and up to the floor where the tenant was residing. DW testified that he was only about 10 seconds behind the occupant, however, by the time he arrived, the occupant had been hit by the tenant and the tenant was standing over the occupant yelling at the occupant "if you don't stay down, I will punch you again". DW stated that he placed his body between the two males and told the tenant to go back inside his rental unit. DW testified that the police did attend; however, no charges were laid.

The tenant testified that the occupant was the aggressor. The tenant stated that the occupant was verbally threatening to hurt him with a knife. The tenant stated he believed the occupant had a knife in his hand. The tenant stated that he hit the occupant to neutralize the threat.

Analysis

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

Upon review of the 1 Month Notice to End Tenancy for Cause, I find the notice is completed in accordance with the requirements of section 52 of the Act.

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

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

In this case the landlord has provided a video footage of the incident. I have reviewed the video footage. The video footage shows an unidentified person, who was identified in the hearing as the occupant, walking down the hallway; although no audio recording was made of the incident, it is clear that the occupant was causing a disturbance as other renters were looking outside their doors into the hallway. The evidence of the

landlord's witness was that the occupant was upset because of the ongoing excessive noise coming from the tenant's rental unit.

The video footage shows that the occupant attended at the tenant's door, and it appears that the occupant and tenant were engaged in a heated discussion, when the tenant strikes the occupant and the occupant falls to the floor.

Although the tenant testified that he hit the occupant in self-defence, as the tenant alleged the occupant was threatening him and had a weapon; however, that is not supported by the video footage. The video footage clearly shows that the only item in the occupant's right hand was a key dangling from a key chain, which the key was not used in any of the video footage as a weapon. The left hand of the occupant was empty.

Further, the witness DW testified that when he arrived seconds later, the tenant was threatening the occupant when on the ground "if you don't stay down, I will punch you again". That statement leads me to believe this was not self-defense as stated, rather an act of anger at the occupant.

I find the action of the tenant hitting the occupant was not reasonable and was unnecessary in this case. If the tenant truly believed he was in any immediate danger as alleged, it would have been reasonable for the tenant to simply close the door to his rental unit, rather than to engage in physical violence.

Therefore, based on the evidence before me, I find the tenant has seriously jeopardized the health or safety of the occupant by hitting the occupant. Therefore I dismiss the tenant's application to cancel the notice. The tenancy has ended in accordance with the Act.

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 **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause, issued on October 17, 2014 is dismissed. The tenancy has ended in accordance with the Act.

The landlord made a verbal application for an order of possession, which I granted.

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 03, 2014

Residential Tenancy Branch

