



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Atira Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for cause.

On the first scheduled date of the hearing the tenant and an agent for the landlord company attended the call and the tenant was represented by an Advocate. At the commencement of the hearing the tenant applied to adjourn the proceedings for one week because due to the holiday season the tenant was not able to obtain legal advice or assistance and received the landlord's evidence last Thursday. Additional digital evidence of the landlord was received by the tenant last Friday, and the tenant's advocate has tried to open the evidence on 3 different computers without success. The landlord's agent opposed the adjournment, however the Rules of Procedure require that evidence be exchanged no less than 7 days prior to the hearing, and the evidence of the landlord was not received by the tenant or the tenant's advocate 5 and 4 days prior to the hearing, and upon being advised that the landlord's evidence would not be considered, the landlord's agent agreed to the one week adjournment.

The parties attended on the second day scheduled, and the landlord's agent called 2 witnesses and the tenant's advocate called one witness. The landlord's agent, the tenant and the witnesses each gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on September 25, 2013 and the tenant still resides in the rental unit. Rent in the amount of \$375.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$187.50 which is still held in trust by the landlord.

The landlord's agent further testified that on December 14, 2014 the tenant assaulted a front desk worker of the landlord. Another staff member of the landlord called the landlord's agent to advise of the assault and confirmed that the incident was on camera and that the staff member had called the police. The landlord's agent told the staff member that he would attend the rental complex the following day and deal with it.

When the landlord's agent attended the following day, he served the tenant with a 1 Month Notice to End Tenancy for Cause by posting it to the door of the rental unit. A copy of the notice has been provided and it is dated December 15, 2014 and contains an expected date of vacancy of February 1, 2015. The reasons for issuing the notice are:

- 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.

The notice also contains handwriting beside the first reason that says, "assaulted staff."

The landlord's first witness testified that he is an employee of the landlord company and was in the lunch room when the tenant walked in and asked the witness for a smoke. The witness told the tenant he didn't have one. The tenant took the witness by the neck and the witness backed up while the tenant hung on and then let go. The witness left the room right away and told a co-worker to call police, who saw it all through the glass from the office. He also testified that it happened really quickly and the notes that the witness made which are provided for this hearing and the video, also provided show it all. When the police came, the witness told them that he didn't want to press charges.

Since the incident, the tenant has realized what he did was wrong, and the relationship has been fine.

The landlord's second witness testified that she is an employee of the landlord company and was at a desk in the office while a co-worker was in the common room. The tenant

had asked the co-worker for a smoke. The co-worker tried to walk away but the tenant took him by the neck of his shirt. The witness called 9-1-1 and then called the landlord's agent.

The police asked the witness what happened and the witness told the police that the tenant grabbed the co-worker by the shirt. The police also talked to the tenant.

The tenant testified that the landlord's employee was in the office and stepped out while the tenant was approaching from down the hall. The employee was very loud when the parties started talking, yelling, as he often does at residents. The two have known each other for over 15 years and were previously roommates. The parties have had a good relationship and no physical altercations in the past. The tenant felt comfortable asking for a smoke, and the employee wouldn't normally talk to the tenant like he did.

The tenant denies assaulting or pushing the employee. He agrees that the parties were close, and the tenant talks with his hands when agitated, which got caught in his sweater. The tenant told the employee to stop talking in that tone and then immediately let go once realizing his hand was caught in the sweater. Then police were called, and when the tenant told the police what happened, they said they would review the video and get back to the tenant if they were going to take further action. They never returned, the tenant was never arrested and never charged. The employee told the police that nothing really happened.

The tenant further testified that the landlord's agent doesn't like him. The tenant heard the employee tell the landlord's agent that nothing happened; it was a communication issue and a misunderstanding. There was no assault and the police said there were no grounds for charges. The tenant and the employee are friends, and back to normal; it's the landlord's agent that's driving the eviction. Even minor incidents are taken a step further by the landlord's agent. The employee didn't want to go further with the incident, but the landlord's agent did. The tenant has never received a breach letter or warning from the landlord's agents about any incidents or breaches.

The tenant's witness testified that he lives in the rental complex and is a friend of the tenant. He witnessed the incident wherein the tenant asked the employee if he could buy a cigarette. The employee was still in the office at that time and the reaction from the employee was aggressive and he was making rude comments about the tenant's character and personal life. The tenant asked him many times to calm down as the pair went into the common area. The tenant was going to make a phone call but the employee kept yelling. The lady working in the office called the police but the other employee told her there was no need to call them. The witness saw the tenant's hand caught up in the employee's shirt, but there was no harm and only the shirt was

touched. The witness and the tenant are both French, and they talk with their hands. When asked if he ever got his hand stuck in someone's sweater, the witness replied in the affirmative and stated that he hit someone once.

Closing Submissions of the Landlord's Agent

There are 43 units in the rental complex, and the landlord cannot tolerate violence. Whether a person is touched or punched, it's an assault. The landlord's agent has 80 staff and a responsibility to make sure assaults, especially against staff, are taken seriously even if police don't charge. He further stated that just because charges are not laid, that doesn't mean an assault didn't take place. The tenancy agreement also states that it's not tolerated.

He also stated that the tenant's actions after a notice to end the tenancy is served are an important factor. Refusing to admit it and no apology speaks loudly.

Closing Submissions of the Tenant's Advocate

The tenant does not feel there was an assault which is corroborated by the lack of response from the police. Further, the tenancy agreement says that eviction is warranted if charges are laid and verbal abuse will result in a breach letter. Even the employee didn't want to press charges and told his co-worker to not call police. The parties have resumed a friendship.

It's agreed that the job of the landlord's agent is challenging, but employees have to avoid being antagonizing. The employee was not acting in a professional or appropriate manner, being rude and making slanderous comments and yelling at the tenant, and that is not acceptable.

Analysis

Where a tenant disputes a notice to end the tenancy issued by the landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. I have also reviewed the tenancy agreement. Paragraphs 5 and 6 of the Addendum state:

"5) Tenants in no way shall verbally or physically abuse staff or fellow tenants. Physical abuse will result in charges being pressed as well as an immediate eviction notice. Verbal abuse will result in a breach letter.

“6) Tenants agree that Four (4) breach letters will result in a One (1) Month eviction notice.”

Although I am not entirely satisfied that as a result of the tenant's habit of speaking with his hands his hand got caught in the employee's sweater, the employee also had an obligation to treat tenants with respect, and I find that he didn't. The witness of the tenant observed the incident and testified that the employee was rude, yelling, making inappropriate comments about the tenant's character and personal life. All witnesses testified that the employee did not want to press charges and did not want his co-worker to call police.

I have also viewed the video, and the event was very short-lived. The landlord's agent takes the position that any assault is intolerable for the safety and security of other tenants and the landlord's employees, and I accept that. The notice states that the tenant has unreasonably disturbed another occupant or the landlord and seriously jeopardized the health, safety or lawful right of another occupant or the landlord. In this case, I do not find that the incident seriously jeopardized anyone. I further find that the tenant reacted briefly to the unreasonable behaviour of the landlord's employee, and I cancel the notice.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause issued on December 15, 2014 is hereby cancelled and the 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: January 22, 2015

Residential Tenancy Branch

