



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPE, O
Tenant: CNC, OLC, RP, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession. The tenant sought to cancel a notice to end tenancy and an order to have the landlord make repairs and comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

The tenant submitted the evidence for her Application for Dispute Resolution to the Residential Tenancy Branch (RTB) on July 24, 2015 or 5 days before the hearing and served this evidence to the landlord personally on July 24, 2015. The landlord confirmed that she had reviewed the tenant's evidence and was prepared to respond to it.

Residential Tenancy Branch Rule of Procedure 3.1 requires the applicant to serve the respondent with their evidence within three days, if available, of their Application being accepted. For any evidence not available at the time the applicant filed their Application it must be served on the respondent as soon as possible or at least no later than 14 days prior to the hearing.

While the tenant failed to provide her evidence to the landlord and the RTB until 5 days before the hearing I find the landlord is sufficiently prepared to proceed and respond to the tenant's Application and as such, I accept the tenant's evidence and have considered any relevant submissions for this decision.

Based on the above, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 1 Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the tenant's claim to have the landlord comply with the *Act*, regulation or tenancy agreement or to make repairs to the residential property. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claim is unrelated in that the basis for it rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 1 Month Notice. I exercise my discretion to dismiss the tenant's claim for an order to have the landlord comply with the *Act*, regulation or tenancy agreement and to make repairs. I grant the tenant leave to re-apply for this other claim.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause, pursuant to Sections 47 and 55 of the *Act*.

It must also be decided if the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Act*.

Background and Evidence

The parties agreed the tenancy began on April 1, 2014 as a month to month tenancy for the monthly rent of \$1,200.00 due on the 1st of each month with a security deposit of \$600.00 and a pet damage deposit of \$300.00 paid.

The tenant submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on May 27, 2015 with an effective vacancy date of July 1, 2015 citing the tenant or a person permitted on the property by the tenant has significantly interfered with our unreasonably disturbed another occupant or the landlord.

Both parties provided testimony regarding various disagreements throughout the tenancy with reference the specific primary issue related to an altercation between the two parties on May 25, 2015.

The landlord submits that she had opened the back door to her residence to put out some recycling and the tenant started screaming at her from across the yard; that she yelled profanities at her and that the tenant threw the recycling bin and a can of paint at her.

The landlord submits that as a result of this altercation she contacted the police and despite her requests to have them do so the police convinced her to not pursue the

matter because of their previous knowledge of the tenant. The landlord provided a police file number.

The tenant submits that on May 25, 2015 the landlord had sent her a text advising her of mail for the tenant. She stated that after several text messages she decided it would be better to discuss directly with the landlord. She states that after the landlord walked back inside and ignored her she became frustrated and slammed the recycling bin on the kitchen floor.

The tenant submits that the police never contacted her after this incident but that she had contacted the police later and was informed of the landlord's complaint. The tenant submits she was told that matter was closed and the landlord was not pursuing it.

The landlord submitted into evidence a video recording showing the two parties ending their interaction with the recycling bin and a paint can on the floor of the kitchen. The recording shows the tenant, in the dark, and the landlord's arm while they are closing down their argument.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

When one party to a dispute provides testimony regarding circumstances related to an event during a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

From the testimony of both parties I accept that an altercation did occur on May 25, 2015. However as the landlord provided testimony stating the altercation occurred in a certain way and the tenant provided testimony stating it occurred in a different way, the burden rests with the landlord to provide sufficient additional corroborating evidence.

In the case before me, while the landlord has provided a police file number she has provided no evidence from police confirming what the complaint was related to that file number or the outcome of the complaint. As such, I find there is insufficient evidence to establish police involvement in the incident of May 25, 2015.

As to the landlord's claim that as a result of this altercation she is fearful of the tenant, I find that the video recording provides no insight into any fear the landlord may have felt as she presented herself calmly.

While I accept that the tenant's behaviour during this one altercation was inappropriate to either throw the recycling bin onto the kitchen floor or at the landlord I find it is not

sufficiently significant to warrant the ending of the tenancy. However, I caution the tenant that should any similar behaviour be repeated it may render sufficient significance to end the tenancy.

Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution.

I grant the tenant's Application and order the 1 Month Notice to End Tenancy for Cause issued on May 27, 2015 be cancelled with the tenancy remaining in full force and effect.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the tenant for this application. I order the tenant may deduct this amount from a future rent payment pursuant to Section 72(2)(a).

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 29, 2015

Residential Tenancy Branch

