



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PR LOTUS HOTEL LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution in which the Tenant sought to cancel a Notice to End Tenancy for Cause issued July 8, 2015 (the "Notice").

The Tenant and the Landlord's property manager, D.S., appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. The participants provided affirmed testimony and the parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and witnesses, and make submissions to me.

The only evidence submitted in this hearing was a copy of the Notice. Neither party called any witnesses.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Residential Tenancy Branch Rules of Procedure Rule 11.1 provides that when a Tenant applies to set aside a Notice to End Tenancy, the respondent Landlord must present their case first.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The Landlord testified that the tenancy began on September 1, 2012. The Tenant was originally required to pay rent in the amount of \$700.00 per month and at the time of the hearing, rent was \$715.00 per month.

The reasons cited in the Notice were as follows:

- The Tenant, or a person permitted on the property by 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 testified that the Notice was issued due to an incident on July 3, 2015. According to the Landlord, the police attended the rental unit and when the Tenant did not answer the door, 30 more officers, including snipers, and officers with their “guns drawn” attended. The Landlord stated that four hours later, the Tenant was arrested. The Landlord confirmed he does not know what happened or what precipitated the call.

The Landlord did not submit the police report into evidence. As well, the Landlord did not call any other occupants as witness to this event.

The Landlord further testified that the other renters in the building were very upset about this. The Landlord stated that he received in excess of 20 verbal complaints, but that the other renters were too frightened to make any complaints in writing. The Landlord stated that the other renters were afraid the Tenant was involved in drug dealing. No evidence was submitted to support this allegations.

When I asked the Landlord if this was the only time the police had attended the Landlord responded that the police had attended twice before. He stated that there had been a physical altercation between the Tenant and another occupant which resulted in that other occupant dying in the lobby. When I asked why the Landlord did not issue a notice to end tenancy at that time, the Landlord responded that the information he had from the police was that the Tenant was not at fault.

I asked the Landlord if he had obtained the police file from that incident and he confirmed he had not, although he did have a file number. When I asked the Landlord if he had made an application for disclosure of that police file, he confirmed he had not.

The Landlord also stated that he did not issue a notice to end tenancy as he had a good relationship with the Tenant and that for the most part the Tenant keeps to himself.

I informed Landlord that I had concerns about the insufficiency of evidence, and in particular the minimal details regarding the July 3, 2015 incident, which precipitated the issuance of the Notice, as well as the incident wherein another renter died.

The Tenant testified that the police attended his rental unit on July 3, 2015 because he was suicidal. He stated that his family called the police as they were worried about him. He further stated that he did not realize the “commotion” outside his apartment as he was inside and unaware of the number of police who had attended. He said that he was taken to the hospital, not arrested as alleged by the Landlord.

When I asked him if he had informed the Landlord of this, he stated that he did and that when he informed him he also questioned the Landlord if they would have issued a notice to end tenancy in the event a tenant had a heart attack. The Tenant reiterated that he was in his apartment and did not realize the extent of the police presence or the “commotion” that was caused.

When I asked the Tenant about the previous incident described by the Landlord, the Tenant responded as follows:

- “I didn’t receive an eviction notice for that”
- “I don’t know what he is talking about”
- “I don’t recall the incident, no”.

I asked him to confirm that he did not recall a physical altercation wherein another occupant of the rental building died, and he responded, “No, I don’t recall.”

The Tenant confirmed that he did not have any further evidence.

The Landlord was provided an opportunity for a brief reply. The Landlord stated that the “previous incident” occurred on September 19, 2015. The Landlord stated that it was simply not believable that the Tenant didn’t recall this incident and that it was “all over the news” and that the Landlord had a video of the incident.

When I asked the Landlord if the Tenant had informed him that the July 3, 2015 incident was as a result of the Tenant being suicidal, the Landlord confirmed that the Tenant did inform him of this; however, the Landlord stated that he did not believe the Tenant’s

story as he thought it was not reasonable for 30+ police to attend with guns drawn and snipers to a suicide attempt.

The Tenant then interrupted the Landlord and stated the following:

- “I’m not permitted to talk about it”;
- “it is confidential information”;
- “I don’t want to relive it”; and,
- “I was in hospital for five days. It was a very traumatic incident and I do not want to relive it.”

Analysis

The Landlord cited the July 3, 2015 incident as being the reason for issuing the Notice. As indicated during the hearing, the evidence surrounding this incident was minimal. Although the police were involved, neither party submitted any evidence from the police file.

Two possible versions of events were presented by the parties. The Landlord testified that he did not have any information as to why the police attended, but that other renters worried it was somehow drug related. The Tenant submitted that his family called the police as he was suicidal. He testified that he was unaware of the extent of the police presence on that date and that he was not arrested, but taken to hospital where he stayed for five days.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I find that it is not possible, on a balance of probabilities, to decide what occurred on July 3, 2015 to cause such a significant police response.

The Landlord also testified as to an incident which occurred September 19, 2014. He claimed the Tenant was involved in a physical altercation with another renter which culminated in that other renter dying. The Landlord stated that he did not issue a notice to end tenancy at that time as the police informed him that it was not the Tenant’s fault. The Tenant denied any knowledge of this incident whatsoever. The Landlord claimed this incident was “all over the news” and that they had video footage of the event. Despite the Landlord’s claims, no such supporting evidence was filed.

The Landlord testified that despite the seriousness of the September 19, 2014 incident he did not issue a notice to end tenancy at the time as he was informed it wasn't the Tenant's fault, he and the Tenant got along and the Tenant mostly kept to himself.

Although the allegations made by the Landlord in relation to the September 19, 2014 incident are serious, the Landlord appears not to have acted on them by issuing a notice to end tenancy.

The reason for issuing the Notice, according to the Landlord, was the police presence on July 3, 2015. The Landlord failed to introduce any evidence as to the reason for the police presence. The Tenant testified that he was suicidal. Although I accept that the large police presence could have been unsettling and upsetting for some of the other occupants, I find there is insufficient evidence to find on a balance of probabilities that the Tenant has *significantly* interfered with or *unreasonably* disturbed the other occupants to such an extent as to warrant ending the tenancy.

The Landlord bears the burden of proving the Notice should be upheld and without any corroborating evidence I am unable to find on a balance of probabilities that the Tenant seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

For the foregoing reasons, I grant the Tenant's request to cancel the Notice. The tenancy will continue until ended in accordance with the Act.

Conclusion

The application is granted and the Notice is set aside.

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: September 16, 2015

Residential Tenancy Branch

