



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the "Act"), to cancel 1 Month Notice to End Tenancy for Cause, (the "Notice") issued on August 27, 2015.

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, Rule 11.1 of the 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.

Counsel for the landlord requested that if the tenants' application is dismissed that they seek an order of possession pursuant to section 55 of the Act.

Issues to be Decided

Should the Notice issued on August 27, 2015, be cancelled?

Background and Evidence

The tenancy began on February 1, 2014. Rent in the amount of \$550.00 was payable on the first of each month. The tenants did not pay a security deposit.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on September 30, 2015.

The reason stated in the Notice was that the tenants have:

- 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 tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
 - jeopardize a lawful right or interest of another occupant or the landlord.

Counsel for the landlord submits that the male tenant CC, physically assaulting another occupant by punching the occupant in the ear, which resulted in the male tenant being arrested and charged with criminal assault. Counsel submits that the tenant was released by the police on a court undertaking and the tenant is not to have contact directly or indirectly with the occupant. Filed in evidence is a copy of the police report. Filed in evidence is a copy of the court undertaking.

Counsel submits that the female tenant after the assault occurred also harassed the occupant by taping a box of female tampons to the occupants door and then sending a text message which may be considered a breach of the male tenant's undertaking. Filed in evidence is a photograph of the box taped to the occupant's door and a copy of the text message.

The landlord testified that when they went to serve the tenants with the Notice, the tenants were extremely hostile and they both were screaming and swearing at them. The landlord stated that due to the tenants' actions they felt the tenants could retaliate, so they attended their local police detachment to notify them that they were concern for their safety and wanted a file to be opened in case something should happen. Filed in evidence is a copy of the police report.

Filed in evidence in support of the landlord is a witness statement of MR, which reads in part,

"I ... witnessed the landlord agent KS serving CC a 30 day eviction notice with cause in person on Thursday August 27th. ... which he and JE took exception and amongst some of their choice swear words called me derogatory and disrespectful names."

[Reproduced as written]

The witness DM testified that the male tenant had just come home from work when he asked him to pay their portion of a join bill. The witness stated that the male tenant told him "let me get inside and shower and change first and then we can talk later".

The witness testified that about 20 to 30 minutes later he went to the tenants' rental unit and knocked on the metal frame of the patio door, which their units share a common patio. The witness stated that the tenants did not answer the door and he was unsure if the tenants were avoiding him or if they just did not hear him knock. The witness stated that he then decided to knock again by tapping their key on the glass panel of the door.

The witness testified that male tenant then came to the door swearing at him and raised his fist and indicated that he wanted to fight. The witness stated that he raised his in a defensive

position as the male tenants actions surprised him and then the male tenant punched him in the left ear, which knocked him to the ground on the common patio. The witness stated that he immediately left and called 911, and the police were dispatched and an ambulance attended as he was bleeding from the ear. Filed in evidence are photographs taken by the police of the left ear of the occupant.

On cross-examination of the witness by the male tenant, the male tenant suggested to the witness that the incident occurred inside the tenants rental unit; the witness denied ever entering into their rental unit and restated they were on the patio when punched by the male tenant.

The male tenant CC testified that when the landlord attended the rental unit to serve the Notice, they were shocked and could not believe they were being evicted. CC does not deny they used inappropriate language, but stated that the landlord and their witness were also using the same inappropriate language.

The male tenant CC testified on August 22, 2015, the occupant DO, entered their rental unit without their consent and wanted to be paid for this joint bill, but they were not going to pay any more money to him until they saw the complete bill. The tenant stated that DO then pushed him and that he pushed DO back and may have gotten his ear.

The male tenant CC testified that he was charged with assaulting the occupant; however, they have arranged with the crown counsel to enter a guilty plea and receive a conditional discharge. The male tenant stated that they are only pleading guilty because they cannot afford to pay for a lawyer.

The female tenant JE testified the occupant DO had on several occasions entered into their rental unit without their consent and even once when she was in the shower. JE testified that they never contacted the police.

The female tenant JE testified that the male tenant did not know that she had taped the tampons to the occupant's door or sent a text message to him. JE stated that she only did that as she assumed the occupant smeared dog feces on their door after the incident occurred.

Analysis

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

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy. A Notice issued under this section of the Act must comply with section 52 of the Act – Form and content.

Upon my review of the Notice, I find the Notice complies with the requirements of section 52 of the Act.

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

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- the tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
 - jeopardize a lawful right or interest of another occupant or the landlord.

On August 22, 2015, a physical altercation occurred between the male tenant and the occupant. While both parties have provided a different version of events to where this incident occurred, I prefer the evidence of the occupant over the tenants that the incident occurred on the shared patio, as the police report is consistent with the occupant's testimony.

Further, the photographic evidence supports that the occupant was punched in the ear, rather than a pushed as claimed by the tenants and the injuries are not consistent with a simple push.

Furthermore, I find it highly unlikely that the police would request criminal charges of criminal assault and crown approving those charges, if the incident occurred as suggested by the male tenant. I find it would be unreasonable to enter a guilty plea if innocent.

Furthermore, I find the female tenant not credible when they indicated that the only reason for taping the tampons on the occupant's door was in retaliation due to the occupant smearing dog feces on their door. Firstly, there is no evidence of this allegation, such as photographs showing dog feces or a police report. Secondly, the text message sent by the female tenant regarding the tampons to the occupant makes no reference to dog feces, I find if such an incident occurred it would have likely been noted in their text message.

In light of the above, I find the Notice issued on August 27, 2015, has been proven by the landlord and is valid and enforceable.

Therefore, I dismiss the tenants' application to the cancel the Notice issued on August 27, 2015.

As the tenants' application is dismissed and the landlord requested an order of possession at the hearing, 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 the tenancy legally ended on September 30, 2015, I find the tenants are now overholding the rental unit. I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants.

Since the tenants were not successful with their application, I find the tenants are not entitled to recover the filing fee from the landlords.

Conclusion

The tenants' application to cancel the Notice, issued on August 27, 2015, is dismissed.

The landlord is granted an order of possession.

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: November 05, 2015

Residential Tenancy Branch

