Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes opc, mndc, o, cnc, lre, mndc, olc,

Introduction
The tenant applies for an order cancelling a One Month Notice to End Tenancy, dated December 7, 2015. The tenant also applies for several other orders. The landlord applies for an Order of Possession, on the basis of the December 7, 2015 Notice. The landlord also applies for several other orders. Both parties attended and testified at the hearing. Both had witnesses present, who were prepared to provide testimony, should I require it. I determined such potential testimony related to matters outside of the scope of the key issue dealing with the validity of the December 7, 2015 Notice ending the tenancy. I therefore did not elicit testimony from these witnesses.

At the outset of the hearing, I pointed out to the parties that one of the objectives of the Rules of Procedure for hearings of this nature is to ensure a consistent, efficient and just process for resolving disputes (Rule 1.3). It is not possible within this context to deal with a vast array of issues of concern to the parties in one short hearing. Accordingly, those issues not related in fact and law to the key issue of the validity of the Notice that purports to end the tenancy are not dealt with in this decision, and are all dismissed pursuant to Rule 2.3, with liberty to re-apply.

Extensive written materials were provided by both parties, and all such material relevant to the issue of the validity of the subject Notice has been reviewed and considered in arriving at my decision.

Issues to Be Decided

- Is the One Month Notice to End Tenancy (dated December 7, 2015) effective to end this tenancy, and entitle the landlord to an Order of Possession, or should the Notice be cancelled, and the tenancy continue?
- Is either party entitled to recover their filing fee from the other?

Background and Evidence
This tenancy began June 1, 2014. Rent is due in advance, prior to the 1st day of each month in the amount of $1,300.00. A security deposit of $650.00 was paid at the start of the tenancy.

On December 7, 2015 the landlord prepared a one month Notice to End Tenancy, which the tenant received December 9, 2015. The Notice alleged the tenant had seriously

jeopardized the health of safety of the landlord, and had jeopardized a lawful right or interest of the landlord. The Notice further alleged that the rental unit must be vacated to comply with a government order.

The landlord submitted (given in summary form) that the tenant had posted numerous comments on her facebook page about the landlord, which the landlord submits constitutes cyber-bullying and is a form of harassment. Some of the comments are distressful to the landlord, (such as a reference by the tenant to the landlord and her mother as being “ugly bitches”). A reply by one friend of the tenant refers to “kicking the landlord’s ass”, which the landlord submits raises safety concerns. The landlord also submitted that the tenant had poured hot coffee on her leg (in July), although she cannot say if it was intentional. Finally, the landlord has received two letters from the City of Surrey, to the effect that there is an illegal secondary suite in the rental property, and the stove and its electrical service must be removed. The landlord submits this letter constitutes an order that the tenancy with this tenant must end.

The tenant replies (in summary) that she was under duress by the landlord, and felt the need to respond on her facebook page. The landlord is not a “friend”, and she considered comments posted there to be private. She denies intentionally spilling coffee on the landlord, and attributes the incident to an accident and a result of anxiety. She submits that the issue of the illegality of her rental unit has already been addressed and resolved in a prior hearing.

Analysis

I address firstly the issue of the letter (dated January 4, 2016) from the City of Surrey. As pointed out by the tenant, a prior decision (in file 840138) determined that the tenancy could not be ended on the basis of the first letter from the City of Surrey. I note that the two letters in question (September 1, 2015 and January 4, 2016), are essentially identical. Both notify the landlord that there is an illegal secondary suite in the premises, and that the stove in the suite must be removed and the electrical service for that stove be removed by an electrician.

The tenant submits this issue has already been fully dealt with in the previous hearing. To use the applicable legal terminology, the tenant raises the defence of issue estoppel. Issue estoppel is a form of res judicata. The doctrine of res judicata operates to prevent a claim being litigated more than once, and applies to arbitrations under the Residential Tenancy Act. Issue estoppel arises in situations where although a new claim may be somewhat different, some point or issue has already been decided in a prior case between the same parties.

I find that all of the requirements for the defence of issue estoppel have been met. The decision of the previous arbitrator in file 840138 ruled that the first letter from the City of Surrey did not provide sufficient cause to end the tenancy. I need not repeat the extensive reasons provided by the arbitrator in that case. It is sufficient to note that a final and binding decision was made on this issue. I am estopped from offering a further or different decision over that same issue.

The landlord's Notice includes two new potential causes to end the tenancy. The landlord's evidence however, fails to demonstrate sufficient cause on these grounds. I certainly agree that the tenant has used offensive language on her facebook page when describing the landlord and her mother, but note that these comments almost all pre-existed the landlord's first notice. The landlord had opportunity to include this issue in the previous Notice to End, but did not do so. To raise these issue now, when opportunity to raise them existed at the time of the first notice, is form of abuse of process. A landlord is not entitled to provide repeated Notices to a tenant for past incidents, while those same reasons could have all been included on a prior Notice. Furthermore, while disturbing and offensive, the "ugly bitches" comment (or any remotely similar comment) has not been repeated by the tenant, and I do not accept that a one time reference in a forum the tenant thought was private, is sufficient to constitute harassment. The "ass-kicking" comment is not demonstrated to raise a legitimate safety concern, as the context suggests the comment is strictly one of hyperbole. Finally, I note the landlord herself acknowledges that the coffee incident was not necessarily intentional. In sum, the conduct of the tenant, while disturbing and questionable, is not proven to meet the threshold of cause for eviction.

Based upon the above, I order that the December 7, 2015 One Month Notice be cancelled. The tenancy continues. The landlord's request for an Order of Possession is dismissed.

I decline to award the recovery of the filing fee to either party. The landlord's claim in this regard is denied because the landlord is not successful in her claim. The tenant's claim is denied, because the award is entirely in my discretion, and I deny recovery of the filing fee as a direct result of the tenant's use offensive language about the landlords on her facebook page.

Conclusion

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 26, 2016

Residential Tenancy Branch