



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GARDEN CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, ERP, LRE

Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause, for monetary compensation for heating inconsistencies in her rental unit and possibly relating to the conduct of a building manager, and for orders regarding repairs to her rental unit and restricting the landlord's right of entry.

The Notice, dated October 21, 2015 alleges that the tenant or a person permitted on the property by her has "significantly interfered with or unreasonably disturbed another occupant or the landlord."

This matter first came on for hearing January 4, 2016. The tenant did not attend that hearing. The landlord's representative did. The tenant's application was dismissed without leave to re-apply.

The tenant successfully applied for review of that decision arguing that she had not received a notice of the hearing having been rescheduled by the Residential Tenancy Branch to a date earlier than the one she'd been provided with when she made her application and that she was in ill health. The reviewing officer granted her application on the basis that the tenant had not received the notice of the rescheduled hearing. The reviewing officer felt it not necessary to consider the other ground for review; the tenant's ill health.

The tenant did not attend this hearing within twenty minutes after its scheduled start time. The landlord attended by its representatives, the respondent Hr. H. and Mr. B. They were ready to proceed.

On the day before the hearing a representative from a tenants' advocacy association sent a request on behalf of the tenant to the Residential Tenancy Branch requesting that this hearing be postponed for medical reasons.

The writer stated that she had observed the tenant that morning and that the tenant was experiencing “significant distress.” She wrote that the tenant reported to her that she had serious physical health symptoms and described them. She directed the tenant to go to the hospital. She stated that the tenant had a doctor’s note to support her current condition and that she had advised the tenant to fax the note to the Residential Tenancy office at her earliest availability.

Unfortunately, though the tenant did send in a fax of a ten day Notice to End Tenancy, a bank statement and a note, she did not send in the doctor’s note to support her current condition.

The landlord’s representatives would not consent to having this matter adjourned from today. They pointed out that the tenant had a telephone in her apartment and could have called into the hearing from there.

Issue(s) to be Decided

The preliminary issue is whether or not this hearing should be adjourned based on the foregoing information, if not, then has the Notice ended the tenancy?

Background and Evidence

The background and evidence are set out above in the Introduction.

Analysis

The Rules of Procedure direct any consideration of an adjournment.

Rule 5.1 provides that the party requesting an adjournment should attempt to obtain the other side’s consent at least three days before the hearing. That Rule is not applicable considering the tenant’s request arose the day before the hearing.

Rule 5.2 says that when a prior agreement to adjourn a hearing cannot be reached, a party or a party’s agent may make an adjournment request at the hearing, under Rule 7.8.

I consider the tenants’ advocacy association letter to be such a request.

Rule 7.8 provides:

7.8 Adjournment after the dispute resolution hearing begins

At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time.

A party or a party's agent may request that a hearing be adjourned.

The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

Rule 7.9 provides criteria for granting an adjournment,

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I give no consideration to the fact that this matter has come to a hearing once before. The reason accepted by the reviewing officer was that the tenant did not receive notice of hearing having been rescheduled. There is no reason to believe that her failure to do so was somehow her fault.

I have considered the criteria above but find I must decline the tenant's request for an adjournment based on another factor. I consider it essential that the tenant establish her inability to attend for health reasons by the production of a doctor's note stating her inability or the opinion of some other qualified person confirming that the tenant's condition reasonably prevents her from attending.

The tenants' advocacy association letter merely relays the condition the tenant described to its author. The author notes that the tenant is "experiencing significant distress" but she does not indicate that it is medical distress or whether it is, for example, expected anxiety about the upcoming hearing.

I have also considered that the landlord's representatives report that the tenant has paid "occupation rent" for the month of March.

The decision refusing the tenant's request for an adjournment was made at hearing.

The hearing proceeded in the tenant's absence.

I find the landlord to be a limited company and have amended the style of cause to its full name by adding "Ltd." to its name. The respondent Mr. H. is not the tenant's landlord, the limited company is.

Mr. O. testified that the grounds for the Notice in question arise from a dispute about the level of heating in the tenant's apartment. The tenant has repeatedly complained that it is inadequate. The landlord has attended multiple times and confirmed the heating system is functioning properly and there is adequate heat.

Mr. O. says that despite this, the tenant persists in writing notes complaining about the heat and posting them throughout the building, even on the elevator. The landlord records 37 notes since August 2014. Some of the notes refer to the tenant's medical condition, a condition where exposure to cold can cause her to have an anaphylactic reaction. The landlord has warned the tenant in writing that repeated posting of notes around the building will cause it to issue an eviction notice but the tenant has persisted.

Additionally, Mr. O. says the tenant calls the building manager names and disturbs other tenants in the middle of the night.

On this uncontradicted evidence I find that the tenant has been significantly interfering with or unreasonably disturbing other occupants and the landlord.

I dismiss the tenant's claim to cancel the Notice.

As the tenant has not attended to pursue her other claims, I dismiss them.

Section 55 of the *Residential Tenancy Act* (the "RTA") provides:

- 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 to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The landlord's Notice complies with section 52 and the tenant's application has been dismissed. Section 55 compels me to issue the landlord an order of possession.

As the tenant has paid occupation rent for March, I grant the landlord an order of possession effective March 31, 2016.

Conclusion

The tenant's request for an adjournment is refused.

The tenant's application is dismissed.

The landlord will have an order of possession effective March 31, 2016.

It should be noted that nothing in this decision affects the tenant's right to apply for a review consideration on the bases set out in s. 79 of the *RTA*.

This decision was rendered orally at hearing and 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: March 08, 2016

Residential Tenancy Branch

