



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”) and an order for the Landlord to comply with the Act, regulation, or tenancy agreement.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant’s advocate (the “Advocate”), two agents for the Landlord (the “Agents”), and two witnesses for the Landlord; all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, copies of the decision will be e-mailed to her and the Advocate at the e-mail addresses provided in the hearing. At the request of the Agents, copies of the decision and any order or possession issued in favor of the Landlord will be e-mailed to the e-mail address provided in the hearing.

Preliminary Matters

Preliminary Matter #1

The Tenant sought both the cancellation of a One Month Notice and an order for the Landlord to comply with the Act, regulation, or tenancy agreement in her Application. Section 2.3 of the Rules of Procedure states that claims made in an Application must be

related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a One Month Notice, I find that the priority claim relates to whether the tenancy will continue and I exercise my discretion to dismiss the Tenant's claim for an order for the Landlord to comply with the *Act, Regulation*, or tenancy agreement with leave to re-apply.

Preliminary Matter #2

Although two witnesses for the Landlord attended the hearing, they were excluded from the proceedings except when called to provide testimony and evidence.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the One Month Notice?

If the Tenant is not successful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

A copy of the tenancy agreement was not in the documentary evidence before me but the parties agreed that the month-to-month tenancy began in October of 2016.

The Agents testified that the Tenant's daughter, who is an occupant in the Tenant's rental unit, has unreasonably disturbed or significantly interfered with other occupants of the building for many months and that as a result, a One Month Notice was posted to the door of the Tenant's rental unit on January 8, 2018.

The Tenant acknowledged receiving the One Month Notice from her door on January 8, 2018, and the Advocate pointed out that although there was information in the details of dispute section of the One Month Notice, no grounds for ending the tenancy were checked off. The Advocate stated that as the details of dispute section only states that the reason for ending the tenancy is because the Tenant's daughter has unreasonably disturbed one senior occupant of the building, the Tenant believed that this is the only reason for which the Landlord is seeking to end the tenancy and is only prepared to respond to evidence in relation to this one other occupant. As a result, the

Advocate argued that any evidence in relation to the unreasonable disturbance of other occupants or the Landlord should not be considered in this hearing.

The One Month Notice in the documentary evidence before me, dated January 8, 2018, has an effective vacancy date of February 28, 2018, and does not have any grounds checked off under reasons for the One Month Notice. In the details of dispute section it states that the Tenant and her daughter have unreasonably disturbed another occupant of the building, who is a senior. It states that despite repeated efforts by the Landlord, no resolution has been reached and that the police have been called many times. Further to this, the One Month Notice states that the Tenant's daughter has been taunting and bullying the senior resident for the last four months and that the Tenant admitted to previously being evicted for this same reason.

The Agents called two witnesses during the hearing, however, the majority of their testimony related to their own interactions and experiences with the Tenant's daughter and not to the issue of whether or not the Tenant's daughter had unreasonably disturbed the occupant B.V. Only the witness D.G. provided any testimony related to the allegation that B.V. had been unreasonably disturbed by the Tenant's daughter. In her testimony D.G. stated that she is friends with B.V. who has disclosed to her the difficulties she has had with the Tenant's daughter. Further to this D.G. testified that she witnessed the Tenant's daughter punching a wall and shouting that B.V. was hitting her despite the fact that B.V. was not present.

The Agents also provided significant documentary evidence and testimony for my consideration, however, a large amount of this testimony and evidence related to interactions between the Tenant's daughter and either the Agents or occupants of the building other than B.V. In relation to the matter of whether or not B.V. has been unreasonably disturbed by the Tenant's daughter, the Agents testified that the behavior of the Tenant's daughter towards B.V. has escalated and that they have had several conversations with the Tenant where she acknowledges this behavior. The Agents testified that they attempted to resolve this issue by having a mental health worker attend to facilitate mediation and resolution but there was no change in the Tenant's daughter's behavior. They stated that the allegations made by The Tenant's daughter against B.V. are false; however, they did not submit any documentary evidence such as police reports to corroborate this testimony. They argued that there is a significant safety concern as B.V. uses a walker and feels she must often run from the Tenant's daughter, which is not safe for her. Further to this, the Agent's testified that B.V. often walks out of her way to avoid interactions with the Tenant's daughter which is taxing on

her as she is elderly. A general character reference for B.V. was also submitted for my consideration along with a hand-written police file number.

B.V. submitted a written statement for consideration in which she states that the allegations of abuse against her are false and that she is routinely harassed and stalked by the Tenant's daughter, causing her severe mental stress. B.V. submitted a doctor's note in which her physician states that B.V. is experiencing stress as a result of conflict with a young girl in her housing conflict.

In the hearing the Tenant denied being evicted for this reason in the past or admitting this to the Agents. The Tenant and her advocate testified that her daughter suffers from extreme anxiety as B.V. has harassed and physically harmed her and stated that she has had to get a restraining order against B.V. as a result. The Tenant acknowledged that the Agents brought in a mental health worker in an effort to resolve the conflict but stated that it was not successful and that when she pursued further mediation, there was no follow-up from either the Agents or the mental health worker. The Tenant acknowledged that her daughter has some mental health challenges and behavioral issues but stated that she sought treatment in December with great improvement. In any event, the Tenant and her advocate argued that B.V. is also to blame for the conflict with her daughter as she has physically harmed her and often waits for her around the building. As a result, the Tenant and her Advocate argued that the tenancy should not come to an end.

Analysis

Based on the documentary evidence and testimony before me I find that the Tenant was served with the One Month Notice on January 8, 2018, the date she acknowledged receiving it from her door.

Section 47 of the *Act* states that a landlord may 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. Although it was open to the Landlord to select this ground on the One Month Notice, no ground was selected and instead the Landlord outlined the reason for ending the tenancy in the details of dispute section. In this section the Landlord only spoke of the unreasonable disturbance of one particular resident, later identified as B.V., and as a result, in rendering my decision in this matter I have only considered evidence and testimony in relation to the unreasonable disturbance of B.V. by the Tenant's daughter.

Although the Agents provided significant testimony and documentary evidence and called two witnesses, much of this evidence and testimony did not relate to the one occupant, B.V. As a result, I have only considered testimony and evidence related to the whether or not the Tenant's daughter's has unreasonably disturbed of B.V. as this formed the basis for the issuance of the One Month Notice.

Although there was no dispute between the parties that there is conflict between the occupant B.V. and the Tenant's daughter, both parties alleged that the other was responsible for the conflict. The Agents testified that the Tenant's daughter has bullied and harassed B.V. for the past four months and that despite intervention from a mental health worker and the police, there have been no changes to her behavior. The Tenant testified that her daughter suffers from extreme anxiety as B.V. has harassed and physically harmed her. As a result, the Tenant stated that they have a restraining order against her. Although B.V. did not attend the hearing, she submitted a written statement for consideration in which she states that the allegations of abuse against her are false and that she is routinely harassed and stalked by the Tenant's daughter, causing her severe mental stress. In the hearing the witness D.G. testified that she witnessed the Tenant's daughter hitting a wall while shouting that B.V. was hitting her despite the fact that B.V. was not present.

The ending of a tenancy is a serious matter and when a tenant disputes a notice to end tenancy, the landlord bears the burden to prove they had sufficient cause under the Act to issue the notice. Both parties provided persuasive and contradictory affirmed testimony regarding who is at fault for the conflict between B.V. and the Tenant's daughter. While two witnesses were called on behalf of the Landlord, their testimony was largely unrelated to whether or not the Tenant's daughter had unreasonably disturbed B.V. I also note that although B.V. submitted a written statement for my consideration, she did not attend the hearing to provide testimony and the Tenant and her Advocate specifically pointed out that this prevented them from cross-examining her in the hearing. Although B.V. submitted a Doctor's note, I find it of little value as it is based on self-reports by B.V. to her Doctor. Although a character reference was submitted for B.V. it speaks only to B.V.'s general character, and does not provide any evidence regarding the specific allegations made by either party. As a result, I give it no weight. Further to this, although the Agents provided a police file number, there was no documentary evidence before me from the police regarding this file number. As a result, I find that I cannot determine what this file is about or conclude that it relates to this matter.

Based on the above, I find the Landlord has failed to satisfy me, on a balance of probabilities, that they had cause under section 47 of the *Act* to end the tenancy because the Tenant's daughter unreasonably disturbed B.V. As a result, I order that the One Month Notice be cancelled.

Although the One Month Notice before me dealt specifically with the unreasonable disturbance of one particular occupant of the building, there was also evidence before me that the Tenant's daughter may be disturbing other occupants of the building or the Landlord. The Tenant should be aware that if her daughter is unreasonably disturbing other occupants of the building or the Landlord, the Landlord remains at liberty to serve a new Notice to End Tenancy for this reason. In an effort to prevent future disputes, I therefore encourage the parties to work together to resolve any outstanding issues or to mutually end the tenancy on their own terms.

Conclusion

I Order that the One Month Notice dated January 8, 2018, be cancelled and that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

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: March 28, 2018

Residential Tenancy Branch