



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47;
- an order for the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the Act.

Preliminary Issue: Severance of Portion of Tenant's Application

Residential Tenancy Branch Rules of Procedure, number 2.3 states that:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply

It is my determination that the priority claim regarding the One Month Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claim to warrant that they be heard together. The parties were given a priority hearing in order to address the question of the validity of the One Month Notice.

The tenant's other claim is unrelated in that it does not pertain to facts relevant to the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss all the tenant's claims with leave to reapply except for the cancellation of the One Month Notice and recovery of the filing fee for this application.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's One Month Notice pursuant to section 47?

If not, is the landlord entitled to an order of possession pursuant to section 55?

Is the tenant entitled to recover her filing fee for this application pursuant to section 72?

Background and Evidence

The parties agreed that the tenant has been residing at the rental unit for approximately 16 years. The tenant pays rent of \$875.00 per month and she has paid a security deposit of approximately \$400.00. The rental unit is located in a four-plex structure.

The landlord issued the One Month Notice on July 2, 2019. The landlord sought to end tenancy on the grounds that:

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 based this notice on a physical altercation that occurred between the tenant and L.O., another occupant in the four-plex, on June 27, 2019.

L.O. testified that was approached the four-plex on June 27, 2019 and the tenant was outside at the gate. L.O. testified that the tenant yelled at her and accused her of inappropriately texting her. L.O. testified that the tenant blocked the path. L.O. then said that she asked the tenant to let her pass by. However, L.O. stated that the tenant responded by then blocking the path even more. L.O. testified that she then pushed her body past the tenant resulting in physical contact between them. L.O. testified that the tenant then pushed her to the ground. L.O. testified that she got up and the tenant punched her in the side of her head and pulled her hair. L.O. testified that she was only trying defend herself.

L.O. testified that suffered injuries as a result of this altercation. Specifically, she testified that she sustained abrasions on her legs and bruising to her chest, arms and right eye. She testified that she visited a physician for treatment of her injuries and she was prescribed medication for resulting anxiety.

The landlord presented a written statement from L.O.'s roommate, B.P., who witnessed at the incident. B.P. stated that she heard L.O. ask the tenant to step aside. However, B.P. was looking away and she did not see L.O. attempt to get past the tenant. When she looked towards the tenant and L.O., B.P. stated that she saw the tenant push L.O. to the ground. B.P. testified that the tenant then lunged at L.O. and attempted to punch her. B.P. stated that she saw the tenant punch the tenant on the side of her head causing L.O.'s head to snap back and hit the gate. B.P. also stated that she saw the tenant pull L.O.'s hair.

The landlord produced additional witness statements but none of the other witnesses personally witnessed the physical altercation between the tenant and L.O.

The tenant testified that L.O. had been sending harassing text messages to the tenant. The tenant testified that L.O. sent the tenant a threatening text message on June 25, 2019. The tenant testified that she changed her cellphone number on June 26, 2019 to avoid L.O. The tenant provided a copy of the phone number change request.

The tenant stated that she was at the gate on June 27, 2019 when L.O. approached. The tenant stated that the gate was only slightly open because she was trying to keep her dog in the yard. The tenant testified that L.O. was complained to her about mail being stolen. The tenant testified that she was not yelling or acting hostile to L.O. Rather, the tenant testified that she was talking calmly to L.O.

The tenant testified that L.O. then pushed open the gate and she “barreled” past the tenant. The tenant testified that L.O. then kicked and punched the tenant. The tenant testified that she pushed L.O. back at this point to defend herself. The tenant testified the L.O. fell to the ground. The tenant testified that L.O. then got up and lunged at her punching and kicking her. The tenant testified that she then pushed L.O. out of the gate to stop the attack. The tenant testified that she had a sore cheek bone after the incident.

The tenant testified that L.O. has been harassing her prior to the physical altercation. The tenant claimed that L.O. has previously locked her out of the communal laundry room.

Both the tenant and L.O. testified that the police were summoned a result of the physical altercation but no charges have been filed against either of them.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant has failed to comply with certain terms and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The onus is on the landlord to establish the cause upon which the One Month Notice is based.

Rule 6.6 of the Rules of Procedure states in part as follows:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this matter, the landlord’s request to end this tenancy is based on an allegation that the tenant has physically assaulted occupant L.O. on June 27, 2019. However, I find that the landlord has not provided sufficient evidence to establish that tenant did in fact assault the tenant. L.O. and the tenant both provided very conflicting evidence regarding the incident which occurred on June 27, 2019.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In the case before me, both the tenant and L.O. provided testimony conflicting testimony regarding the physical altercation which occurred on June 27, 2019. However, both the tenant and L.O. testified that the initial physical contact that occurred between the parties happened when L.O. brought her body into contact with the tenant's body when L.O. attempted to force her way past the tenant. Furthermore, I find that the tenant's testimony that L.O. has been harassing her is corroborated by the tenant changing her phone number the day before to avoid L.O. Based on the tenant's undisputed testimony that she changed her phone number the day before the incident to avoid L.O. and my finding herein that L.O. initiated the physical contact when she attempted to physically get past the tenant, I find that, more likely than not, L.O. was the aggressor in this physical altercation.

I have considered the written statement of B.P. but I do not find this statement provides sufficient evidence to establish that the tenant assaulted L.O. In her written statement, B.P. acknowledges that she did not see the initial physical contact when L.O. tried to get past the tenant. Furthermore, I give B.P.s statement very little weight since she did not appear as a witness at the hearing and provide direct testimony regarding her observations or subject herself to cross-examination.

For the above-stated reasons, I find that the landlord has failed to provide sufficient evidence to establish that, on a balance of probabilities, that the tenant assaulted L.O. as claimed in the One Month Notice. Accordingly, the tenant's application to cancel the One Month Notice is granted. The One Month Notice is canceled and it is of no force or effect. The tenancy shall continue until it ends pursuant to the Act.

Since the tenant has prevailed in this matter, I grant her application for reimbursement of the filing fee pursuant to section 72(1) of the Act. To satisfy this award, the tenant may deduct the sum of **\$100.00** from ONE future rent payment.

Conclusion

I dismiss all the tenant's claims with leave to reapply except for the cancellation of the One Month Notice and recovery of the filing fee for this application.

The tenant's application to cancel the One Month Notice is granted. The One Month Notice is canceled and it is of no force or effect. The tenancy shall continue until it ends pursuant to the Act.

I grant the tenant's application for reimbursement of the filing fee. To satisfy this award, the tenant may deduct the sum of **\$100.00** from ONE future rent payment.

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: August 22, 2019

Residential Tenancy Branch