



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SWEDISH CANADIAN MANOR
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes TENANT: CNC FFL
 LANDLORD: OPC

Introduction

This hearing dealt with the applications from both the tenant and the landlords pursuant to the *Residential Tenancy Act* (the *Act*).

The tenant applied for:

- cancellation of the landlord's One Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*; and
- the recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The landlord applied for:

- an Order of Possession pursuant to section 55 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Agent T.A. attended on behalf of the housing society landlord and is herein referred to as "the landlord". The tenant attended with an advocate.

Preliminary Issue – Service of Documents

The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding package and evidence, personally served by the tenant to an administrative staff member of the landlord.

The tenant confirmed receipt of the landlord's evidence, served by Canada Post registered mail by the landlord to the tenant.

The landlord testified that the landlord's Notice of Dispute Resolution Proceeding was posted the tenant's rental unit door by the landlord's administrative staff on November 7, 2019.

The tenant disputed receipt of the landlord's Notice of Dispute Resolution Proceeding.

The landlord failed to provide a Proof of Service or any other evidence to support his claim that the tenant was served with the notice of his dispute.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure requires:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Further, I find that the landlord submitted the Application for Dispute Resolution on October 29, 2019, the same day the landlord served the tenant with the One Month Notice. The landlord may not apply for an Order of Possession pursuant to section 55 of the Act until after the 10 days provided to the tenant to dispute the notice has passed.

For the reasons explained above, the landlord's Application for Dispute Resolution is dismissed without leave to reapply as the landlord was unable to prove service of the Notice of Dispute Resolution Proceeding Package and applied prior to the expiration of the dispute period.

Preliminary Issues - Procedural Matters

I explained to the parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the One Month Notice?

Is the tenant entitled to recover the cost of the filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The parties confirmed their understanding of the terms of tenancy as follows:

- This month-to-month tenancy began on May 15, 2018
- Monthly rent of \$458.00 is payable on the first of the month

The One Month Notice dated October 29, 2019, submitted into evidence, states an effective move-out date of December 3, 2019, with the following boxes checked off as the reasons for seeking an end to this tenancy:

Tenant or a person permitted on the property by the tenant has:

- *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.*

Tenant or a person permitted on the property by 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.*

The “Details of Cause” section of the notice states the following:

[Tenant] has displayed aggressive, threatening and physical behavior towards Tenants, Contractors & Staff of [housing society landlord].

The tenant confirmed receipt of the One Month Notice on October 29, 2019, served by the landlord. On November 8, 2019, the tenant filed an Application for Dispute Resolution to cancel the notice, which is within the 10 days allowed under the *Act*.

The landlord testified that there had been two incidents in which the police had been called due to the tenant's behaviour, however, the landlord confirmed that neither incident resulted in any charges being laid. In one case, the police were called as a result of two altercations at the beginning of June 2019 between the tenant and another resident of the rental property. The landlord submitted a written statement from the resident in which the resident claimed he had been threatened verbally and assaulted by the tenant. However, there were no details provided in the statement as to the circumstances of the incidents. The landlord submitted CCTV video in support of his testimony, however, there is no audio in the recording and in part of the video the tenant and the resident are obscured by a tree. The tenant testified that she has had prior issues with the other resident and further testified that the resident provoked the altercation by using foul and offensive language against the tenant, and that as the altercation occurred in the parking lot, in the evening, the tenant felt intimidated by and frightened of the resident. The tenant acknowledged that she threw her tea towards the resident but denied that any of it touched him. The tenant denied that there had been any assault or threats made against the resident.

The landlord testified that he had felt threatened by the tenant's aggressive behaviour. The landlord confirmed that the threats were not to his personal safety but were threats to his job and attempts to provoke him. The landlord testified the other incident in which police were called involved a situation in which the tenant had blocked him from leaving his office. The landlord testified that this resulted in the tenant coming in physical contact with the landlord and bumping him into the door frame. The tenant disputed the landlord's accusations and claimed that he walked past her and her hands were at her side. She testified that she never touched the landlord.

The landlord testified that the tenant and the tenant's dog behaved in an aggressive manner towards the landlord's maintenance technician and a contracted pest control

technician and their pest detection dog, and prevented their egress from the rental unit. The landlord submitted a written statement summarizing these claims, signed by the technician and pest control representative. The tenant disputed the claims made in the written statement and testified that her dog is a small dog that weighs only six pounds and was harnessed on a leash during the inspection of her rental unit. In support of her testimony, the tenant referred to pictures submitted into documentary evidence which show her dog sitting several feet away from the pest control technician allowing a clear pathway for the pest control technician and the detection dog.

I provided the parties with an opportunity to try and come to a settlement of their dispute, however, the parties were unable to do so. As such, I proceeded to address the dispute through arbitration.

Analysis

Section 47 of the *Act* sets out the allowable grounds for a landlord to give notice to end a tenancy for cause.

Section 47(4) of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

The tenant received the landlord's One Month Notice on October 29, 2019. The tenant filed an application to dispute the notice on November 8, 2019, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden, on a balance of probabilities, to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

In the case before me, the landlord provided his own first-hand sworn testimony that the tenant came into physical contact with him as he was exiting his office, resulting in him bumping into the door frame. However, this was disputed by the tenant, there were no witnesses to this event and further this complaint was reported to the police and investigated with no charges being laid. From the audio recorded conversations between the landlord and the tenant, submitted into evidence by the landlord, there is clearly an acrimonious relationship between the parties, with both parties speaking to each other in a frustrated and elevated tone. However, I did not find that the tenant used foul, offensive or threatening language towards the landlord.

As such, I find that the landlord has failed to provide sufficient evidence that there was illegal activity by the tenant or that the tenant's conduct in interacting with the landlord meets the threshold of significant interference or unreasonable disturbance, or that the tenant's conduct seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord submitted into documentary evidence written statements from a resident and from the landlord's maintenance technician and a contracted pest control technician regarding aggressive behaviour by the tenant. However, the tenant provided first-hand sworn testimony disputing the allegations made by the resident regarding an assault and provided testimony that the resident provoked the verbal altercation due to the resident's use of profanity towards the tenant. Again, this incident was investigated by police and determined that charges were not warranted. The tenant also provided first-hand sworn testimony disputing the claims made by the technicians, and also submitted photographic evidence to support her claims that her dog was harnessed and under control and not impeding the egress of the technicians. I find that because the tenant provided her testimony first-hand, under oath, and was available to be cross-examined by the landlord, I give more weight to this first-hand, affirmed testimony than a written statement, not provided under oath and not subject to being questioned or cross-examined by the other party. The landlord was at liberty to have scheduled the resident and the technicians to attend as witnesses at the hearing to provide their first-hand sworn testimony on the matter, but did not do so. As such, I do not find sufficient evidence to support the landlord's allegations that the tenant engaged in illegal activity, or that the tenant's interactions with the resident or the technicians meets the threshold of significant interference or unreasonable disturbance, or that the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Therefore, based on the testimony and evidence presented, on a balance of probabilities, I find that the landlord has failed to provide sufficient evidence to prove the grounds for issuing the One Month Notice on the grounds of “illegal activity”; “significant interference and unreasonable disturbance” or “seriously jeopardizing the health or safety or lawful right of another occupant or the landlord”.

Therefore, as I do not find that the landlord has not proven the grounds for ending this tenancy, the tenant’s application is successful and the landlord’s One Month Notice is cancelled and of no force or effect.

As such, the tenancy will continue until ended in accordance with the *Act*.

As the tenant was successful in this application, the tenant may, pursuant to section 72 of the *Act*, recover the \$100.00 filing fee from the landlord. In place of a monetary award, I order that the tenant withhold \$100.00 from a future rent payment on one occasion.

Conclusion

The tenant was successful in her application to dispute the landlord’s One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated October 29, 2019 is cancelled and of no force or effect, and this tenancy shall continue until it is ended in accordance with the *Act*.

The tenant may deduct \$100.00 on one occasion from monthly rent in satisfaction of the recovery of the filing fee.

The landlord’s Application for Dispute Resolution is dismissed without leave to reapply.

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: December 30, 2019

Residential Tenancy Branch