



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on January 13, 2020.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on October 15, 2016. Rent in the amount of \$940.00 was payable on the first of each month. The tenant paid a security deposit of \$470.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on February 29, 2020.

The reason stated in the Notice was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- seriously jeopardized the health safety or lawful right of another occupant or the landlord.

The details of cause are the followings,

“Incident on Dec. 4th/19 involving physical violence. See attached letter of January 13, 2020, detailing breaches to section of the RTA 28 and 27 and breach of tenancy agreement. Section 20 and 30”.

[Reproduced as written.]

The landlord’s agent stated that on December 4, 2019, they were informed by another resident that there were two residents having an altercation in the laundry room. The agent stated that they investigated the matter and the police spoke to both parties involved in the incident.

The landlord’s agent stated that the video evidence shows that the tenant was struck by the other residence; however, the police determined this was not an act of violence. The agent stated that the tenant who is legally blind used their cane to physically hit the other resident in their leg and the cane was also raised in violence later in the video.

The landlord’s agent stated that the other resident has been evicted and as the tenant also used violence, which is contrary to their tenancy agreement and they want to end the tenancy.

The advocate for the tenant submits that the tenant was defending himself and was a victim in this case.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- seriously jeopardized the health safety or lawful right of another occupant or the landlord.

I have reviewed the video of the incident that occurred between the tenant and another resident of the building. The video shows that the tenant, who is visually impaired was struck in the face with the dryer link trap and then pushed by the other resident. I find the police responds that this was not an act of violence concerning as no person has the right to physical hit another person. I find there is no doubt that the tenant was assaulted.

In this case, the tenant had their cane for medical issues. The cane may have hit the lower leg of the assaulter; however, that was only because the tenant had just been assaulted and was still in a reactive state. Further, while I accept the tenant did raise their cane after the assault occurred, that appears to be in the self defensive mode when the other resident passed by them when vacating the laundry room.

While I accept both the tenant and the other residence may have been in some form of dispute and could have walked away before the situation got out of control. However, I find it would be unreasonable to end a tenancy for the person who was assaulted, and was simply responding to that assault.

I find the evidence does not support the Notice was issued for the reasons stated. Therefore, I grant the tenant's application to cancel the Notice. The tenancy will continue until legally ended.

I caution the tenant that they are to avoid and not start or engage in any verbal altercations. Should issues arise between the tenant and other residents of the building they are to be taken to the landlord.

Conclusion

The tenant's application to cancel the Notice, is granted.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *ACT Tenancy Act*.

Dated: March 24, 2020

Residential Tenancy Branch