



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution in which the Tenant sought to cancel a Notice to End Tenancy for Cause issued May 31, 2015 (the "Notice").

This hearing originally convened on July 20, 2015. At that hearing, it was determined that the Landlord had only filed their evidence two business days prior to the hearing. As a consequence the Tenant's response materials were not available to me and I adjourned the July 20, 2015 hearing.

This hearing reconvened on September 28, 2015. Both parties appeared at the hearing. The Landlord was represented by K.N., the Administrative Assistant, and S.S., the Resident Manager. The Tenant attended with her social worker, S.M. The hearing process was explained and the participants were asked if they had any questions. The participants provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised aside from the one mentioned above at the first date for the hearing. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Residential Tenancy Branch Rules of Procedure Rule 11.1 provides that when a Tenant applies to set aside a Notice to End Tenancy, the respondent Landlord must present their case first.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement signed May 30, 2012. The Tenancy initially began as a one year fixed term and continued as a month to month at the expiration of the year. Monthly rent was payable in the amount of \$810.00 and the Tenant paid a security deposit of \$405.00.

LANDLORD'S EVIDENCE

K.N. testified on behalf of the Landlord and confirmed that S.S. signed the Notice on May 31, 2015. K.N. testified that S.S. attempted to personally serve the Tenant on May 31, 2015 at 5:30 p.m. but that the Tenant refused service of the Notice. Fifteen minutes later at 5:45 p.m., S.S. then put the Notice through the rental unit mail slot. The Landlord testified that W.G., another occupant of the rental building, witnessed this service.

The reasons cited in the Notice were as follows:

- 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 a lawful right or interest of the landlord or another occupant

(the "Notice").

Section 90(c) of the Act provides that documents served in this manner are deemed served three days later; namely June 3, 2015.

Section 47 (f) provides that a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within 10 days after the date the tenant receives the notice. In this case, the Tenant made her application on June 2, 2015, well within the time required.

S.S. testified as to the reasons for issuing the notice as follows:

W.G., the occupant mentioned above who witnessed service of the Notice, informed the Landlord that he had been assaulted by the Tenant. Apparently, on May 2, 2015 the Tenant attended W.G.'s apartment seeking the return of her guitar. When he went to retrieve the guitar, she entered his apartment without his consent. He asked her to leave and she then insisted that he give her a cigarette. When he refused, she became angry. According to S.S., W.G. "directed" her out of the apartment and when she got to the front door she hit him in the head twice, the second time knocking his glasses off. W.G. called the police who arrested the Tenant and charged her with assault.

S.S. confirmed the Landlord did not request the police file number nor have they spoken to the police about the incident.

Introduced in evidence was a document purporting to be written by W.G. wherein he writes about the May 2, 2015 incident and provides essentially the same details as reproduce above. This document appears incomplete. When I asked the Landlord if W.G. would be testifying, S.S. stated that he had spoken with W.G. on July 22, 2015 and confirmed the date of the hearing on September 28, 2015. S.S. stated that W.G. had moved from the rental building, but that W.G. said he would contact the Landlord before the hearing to discuss it.

The Landlord also introduced two letters dated July 2012, one which does not indicate the writer, and the other which appears to have been written by the resident managers at an adjacent apartment building. In each of these letters the writers describe an incident on July 10, 2012 wherein the police came to the apartment looking for "Michelle". No indication of the reasons for the police attendance was provided. When I asked the Landlord how this was relevant to the Notice, the Landlord responded that it was evidence that the police had been there before. As indicated during the hearing, without further information as to this incident, I find it is not relevant to the issue before me.

When I asked if the Landlord believed the Tenant had issues with any other occupant of the rental building the Landlord responded that the only issue to which they were aware was the issue between the Tenant and W.G.

TENANT'S EVIDENCE

The Tenant testified as follows.

She stated that the incident with W.G. on May 2, 2015 began when she asked to retrieve her guitar. She said that she had loaned it to him for one night, and when he had kept it for four days she was concerned he would not return it. She stated that on May 2, 2015 he invited her in his rental unit on that date. She agreed that she did ask him to give her a cigarette as a form of payment for borrowing her guitar and that when he responded that her guitar was of poor quality which upset her. She conceded that she raised her voice, but she insisted that she never struck him. Rather, she testified that he assaulted her when he forced her out of his apartment.

The Tenant confirmed that she was arrested and charged with assault. She confirmed she did not have her first appearance as of the date of the hearing.

The Tenant stated that W.G. was the only person she had ever had an issue with in the time she resided in the rental unit.

At the conclusion of the Tenant's evidence the Landlord confirmed they sought an Order of Possession pursuant to section 55.

Analysis

The Landlord cited the May 2, 2015 incident as being the reason for issuing the Notice.

As indicated during the hearing, the evidence surrounding the May 2, 2015 incident was minimal. Two possible versions of events were presented by the parties. The Landlord submitted that The Tenant assaulted W.G. and the Tenant submitted that it was W.G. who assaulted the Tenant.

Although the police were involved, neither party submitted any evidence from the police file.

The Landlord confirmed that the Tenant did not have any issues with other occupants aside from W.G.

W.G. did not testify. On the other hand, the Tenant provided affirmed testimony as to her recollection of events. W.G.'s account of the incident was contained in a document which appears to be incomplete as it starts on "Section 2". Further, it is not clear whether this document was sworn. In the Landlord's testimony, they described W.G. as "escorting" the Tenant out of his apartment. The manner in which the Landlord described his actions lead me to conclude he physically removed her.

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 claim and the claim fails.

I find that it is not possible, on a balance of probabilities, to decide what occurred on May 2, 2015, and as such I am unable to find that his incident warrants ending the tenancy. Further, I find there is insufficient evidence to find on a balance of probabilities that the Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord or, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant

For the foregoing reasons, I grant the Tenant's request to cancel the Notice. The tenancy will continue until ended in accordance with the Act.

Conclusion

The application is granted and the Notice is set aside.

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: September 30, 2015

Residential Tenancy Branch

