



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: CNC, FF

Introduction

This matter dealt with an application by the tenant to cancel a notice to end tenancy as issued by the landlord for cause. The tenant also seeks to recover the filing fee for the cost of this application.

Both the landlord and the tenant appeared at the hearing, and the tenant was represented by an advocate. I advised the participants that they would be allowed to call witnesses and make oral submissions and that I would consider all of that as well as any written submissions received prior to the hearing in reaching my decision.

At the outset of the hearing the landlord requested an order of possession in the event that the tenant's application to cancel the notice was unsuccessful.

Issue(s) to be Decided

Is the notice to end tenancy as issued by the landlord valid and if so is an order of possession to be granted?

Background and Evidence

The tenancy in this matter commenced on May 16, 2008. On September 18, 2008 the landlord issued the tenant a One Month Notice to End Tenancy for Cause citing the following reasons:

- 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 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 or the landlord
 - jeopardize a lawful right or interest of another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In relation to the material breach, the landlord has advised that they rely upon section 17 of the Tenancy Agreement which reads as follows:

“CONDUCT. *In order to promote the safety, welfare, enjoyment and comfort of other occupants and Tenants of the residential property and the Landlord, the Tenant or the Tenant’s guests must not disturb, harass or annoy another occupant of the residential property, the Landlord or a neighbour. In addition, noise or behaviour, which in the reasonable opinion of the Landlord may disturb the comfort of any occupant of the residential property or other person, must not be made by the Tenant or the Tenant’s guest, nor must any noise be repeated or persisted after a request to discontinue such noise or behaviour has been made by the Landlord. The Tenant or the Tenant’s guest must not cause or allow loud conversation or noise to disturb the quiet enjoyment of another occupant of the residential property or other person at any time and in particular between the hours of 11:00pm and 9:00 am.” (excerpt)*

At the hearing the landlord laid out a history alleging a pattern of behaviour by the tenant on several occasions which he alleges constitute harassing and threatening behaviour towards the landlord and other tenants. The landlord also alleges a continued breach of s. 17 of the Tenancy Agreement after the tenant was given written notice to correct the behaviour.

A summary of the allegations are as follows:

- that the tenant has engaged in unwanted sexual advances towards female tenants and has continued after being warned about his behaviour
- that the tenant was banned from an on site computer class for disruptive behaviour
- that the tenant has used foul and profane language directed at the landlord or the landlord's employees
- that the tenant has boasted of his military service and of killing numerous people, which has caused fear amongst other tenants
- that the tenant stated to the landlord's employee that he could "put her down like a dog"
- that the tenant has left repeated phone messages directed at a female tenant which caused her fear and required police attendance, and resulted in the police advising the tenant to stay away from the female tenant
- that the tenant sexually touched and assaulted a female tenant on two occasions in an elevator
- that the tenant has boasted that he could "put the property manager to sleep".

In support of these allegations, the property manager submitted a detailed package of documentary evidence, including statements from the alleged victim of the sexual assaults. The alleged victim was too distraught to be able to give evidence at the hearing and both parties agreed to rely upon her written statements.

The property manager related his own personal encounters with the tenant and also called witnesses to substantiate the allegations. The landlord also stated that meetings had been held with the tenant about his behaviour but that the problems continued and culminated with the issuance of the notice to end tenancy.

The property manager related several meetings with the tenant where the tenant became verbally aggressive towards him and made threats about his military prowess in killing people. He also testified of a meeting where he had to enter a room where the tenant was alone with the female resident manager, due to loud voices and shouting

from the tenant, and found the resident manager visibly shaken and was advised that the tenant had threatened her.

The property manager also related that when the female tenant who complained about being harassed by the tenant called the police, they found that the tenant had placed 51 phone calls and left 38 messages on the female tenant's phone. These messages are alleged to be of a harassing nature and are noted in the alleged victim's statements.

The resident manager gave evidence that in late August she was advised by the female tenant of the harassing behaviour by the tenant and that the female tenant stated that she was terrified of him. The resident manager also gave testimony about a meeting with the tenant where he told her he would put her down like a dog and that this required the intervention of the property manager from the next room. The resident manager also says that the tenant stated that he could, "put _____ to sleep", and that he take on 10 people at once. The resident manager stated that she is in great fear for her life and that even though he has been advised of his problems that the tenant's behaviour has continued in a harassing and threatening manner.

The other property manager who is the spouse of the above resident manager also testified. He stated that on one occasion that the tenant was showing off a pair of underwear belonging to a female tenant as a "trophy". He also stated that the tenant told him that he had killed many men and "that _____ would not be a problem to handle".

Another witness who is a tenant but is also employed by the landlord also testified. She recounted an incident outside where the tenant was seen smoking and it was brought to his attention. This prompted a reaction by the tenant where he stood up, waved his finger in her face, became extremely vocal and swore at her. The witness stated that she was very scared of how the tenant continues to be. She also states that the tenant has tried to hug her despite her requests and makes comments to her that he loves her. She states that these are entirely unwanted advances. The witness also recounted an incident at a birthday party where a female tenant was seen to be shaking like a leaf at the repeated advances of the tenant and ended up crying.

The next witness was another female tenant. She testified that she observed the incident in the office between the resident manager and the tenant and that she heard the tenant state to the resident manager that he could “put her down like a dog” and that she was about to call the police when the property manager arrived from another room. The tenant states that she fears the tenant and has taken to locking the door to her suite which she has never done previously.

The advocate for the tenant called a witness who is a male tenant of the building. His evidence is that he moved into the building in August 2008 and became friends with the tenant. He stated that he has never seen the tenant threaten anyone and that he does not feel threatened by him. He gave evidence that he has seen the tenant with the female tenant who he is alleged to have harassed but has not witnessed such behaviour. In cross examination the tenant was quite uncertain of dates of incidents and some of his observations.

A female tenant also testified briefly that she believed that the tenant had an on going relationship with the female tenant he is alleged to have harassed. She stated that it was in her opinion a romantic relationship and that she had never observed any aggression by the tenant.

The tenant who is the applicant in this matter also gave testimony. He stated that he loves the female tenant and that their relationship is consensual. He denies making the statements which other witnesses have testified to in regards to threatening comments. He states that the landlord is harassing him and that he is a peaceful man.

The advocate for the tenant summarized by stating that there has been a significant misinterpretation of the tenant’s actions. He alleges that the management has taken action against the tenant in retaliation to a letter he wrote a letter in late August and that his relationship with the female tenant is of a consensual basis. The advocate also requested that in the event of the issuance of an order of possession that it not be of an immediate nature.

The property manager summarized, by stating that he and several of the landlord’s employees have faced threats from the tenant, and they view those threats as genuine.

These threats have been reported to the police and charges have not been laid, as it would necessitate no contact orders which would deprive several employees of the ability to report to work. The property manager stated that they attempted to work with the tenant, had meetings with him, and that the behaviour continued and in fact escalated. The property manager has requested that any order of possession be of an immediate nature.

Analysis

I have reviewed the allegations as presented by the landlord in their notice for cause. The landlord bears the burden of proof in this matter and the standard of proof required is that of the balance of probabilities. The landlord has named several causes, and the proof of any one of them is sufficient to be a cause to end the tenancy.

I have reviewed the evidence presented by the witnesses as well as the documentary evidence in reaching my decision. The evidence is significant in relation to several incidents where threatening behaviour is alleged by the tenant. There is also the statement of the female tenant who has alleged unwanted harassment and outright sexual assault by the tenant on more than one occasion.

I find the evidence of the witnesses called by the landlord to be credible. Their recollection of times and details leads to a substantiation of the uttering of death threats by the tenant towards the various property managers and employees of the landlord. The tenant's witnesses were far from specific on their evidence other than to say they had not seen such behaviour.

The statement of the female tenant is in itself compelling and the advocate for the tenant did not seek to dispute or even comment on the allegations of assault and sexual assault by the tenant. The tenant and his advocate did attempt to prove that a romantic relationship does exist between the tenant and the female tenant, but even if that is proven it does not allow harassing phone calls and incidents of assault or sexual touching. The evidence of the tenant is that he loves the female tenant and that all the allegations are made up against him.

The actions of the tenant may not in his mind seem out of the bounds of the norm, but when numerous open comments are made which relate to killing people and putting them down like a dog, a reasonable person would infer that a significant threat exists. The tenant was warned at the start of the tenancy and again on several occasions but elected not to change his behaviour which lead to the notice to end tenancy.

Conclusion

I find that the notice to end tenancy for cause was properly issued and that the reasons as stated by the landlord are valid and proven.

The notice as issued has an effective date to end the tenancy of October 31, 2008 and I will not defer from that date.

I order that the tenancy is to end at 1:00 pm on October 31, 2008 and that the tenant must vacate the premises no later than the prescribed time on the order. The order may be filed with and enforced as an order of the Supreme Court of British Columbia.

Dated: October 23, 2008