



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 hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause (the Notice) and recover the filing fee. Both parties were represented at the hearing and had an opportunity to be heard and respond to the other party's submissions.

In making the Application for Dispute Resolution, the tenant provided an address for service of documents other than the address of the rental unit. I heard testimony that the landlord served late evidence for the hearing upon the tenant at the rental unit address. The tenant claimed to have not received the landlord's documentary evidence. As I was not satisfied that the landlord had adequately served the tenant, I did not accept landlord's documentary evidence. The agent was provided ample opportunity to provide verbal testimony during the hearing.

Issue(s) to be Decided

1. Whether the Notice to End Tenancy should be set aside and cancelled.
2. Award of the filing fee.

Background and Evidence

I heard undisputed testimony that the tenancy commenced June 1, 2007; however, the tenant has been residing in the rental unit prior to the commencement of the current tenancy agreement. On December 31, 2008 the landlord's agent posted a Notice to

End Tenancy on the tenant's door and slid another copy under the tenant's door. This was witnessed by the building concierge. The tenant acknowledged receiving the Notice on January 1, 2009. A copy of the Notice was not provided to me as evidence; however, the tenant verbally described the Notice to me. According to the undisputed testimony of the tenant, the Notice has an effective date of January 31, 2009 and indicates that the reasons the tenancy is ending are:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed 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

The agent testified that the landlord was ordered by the strata corporation to serve the tenant with an eviction notice. The agent testified that the strata corporation's reasons for voting to evict the tenant included verbal abuse and threats made against other occupants; verbal abuse towards the concierge and a maintenance man hired to replace the tenant's door. From the agent's testimony, I heard that the tenant was observed swearing at people in March or April of 2008 and had an altercation with another occupant in August 2008. The alleged altercation with the maintenance man and concierge took place in October 2008.

The tenant testified that he does not recall swearing at people in March or April 2008. The tenant did acknowledge an altercation with another occupant in August 2008 but explained that the other occupant was abusing her puppy and he stepped in to intervene. The tenant stated that words were exchanged by both parties and the only threat he made was to call the SPCA. The tenant explained that he was angry with the maintenance man since he was installing a replacement door that was inferior to the other doors in the building and the tenant denied that he swore at the concierge. The

tenant also pointed out that in the past he has been provided with two notices from the strata corporation with respect to use of the visitor parking and property being stored in the parking garage but that he had never received any sort of complaint or notification of unacceptable behaviour from the strata corporation or the landlord prior to receiving the Notice to End Tenancy.

Upon enquiry, the tenant suggested that the strata corporation wants him evicted because the rental unit door had to be replaced and the tenant's has been insisting that the replacement door be of the same quality as the other doors in the building and up to fire code standards. The tenant explained that the door was damaged when the police broke it down in response to a 9-1-1 call the tenant placed and that when the tenant did not answer his door, the police broke in to check on the tenant's well being. The tenant contended that he will ensure that the strata corporation will be reimbursed for the cost of the door.

Analysis

Upon hearing the description of the Notice served upon the tenant, I am satisfied that the Notice was served under section 47 of the Act. Where a tenant disputes a Notice to End Tenancy, the landlord has the onus to show that there were sufficient grounds for issuing the Notice. Proving that the Notice was issued as per an order of the strata corporation is not sufficient to demonstrate that the tenant has behaved in such a way as to warrant receiving a Notice to End Tenancy under section 47 of the Act.

From the agent's testimony I cannot find that the tenant's behaviour has amounted to illegal activity and I find the second reason cited on the Notice to be without merit. Therefore, I will consider the first reason cited on the Notice in determining whether the tenancy should end. Under section 47(d) of the Act, a landlord may end a tenancy where "the tenant or a person permitted on the residential property by the tenant has

significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property” [my emphasis].

Upon considering all of the evidence and testimony before me, I find that I have serious concerns about the motives of the strata corporation to end the tenancy. Since there were no members of the strata council present at the hearing I did not have the opportunity to make enquiries of the council. With respect to the alleged instances of verbal abuse and threats made in March/April 2008 and August 2008, I remain perplexed as to why the strata corporation would not act much sooner if the alleged instances of verbal abuse were so serious as to warrant eviction of the tenant. I also remain perplexed as to why the strata corporation does not hesitate to issue warning notices to the tenant about parking violations but does not issue any notices to the tenant or the landlord about the tenant’s alleged verbal abuse and threats which I would think is a much more serious matter. Therefore, I find the tenant’s suggestion that the strata corporation is trying to evict the tenant over a dispute about the door may have merit.

Although the Act does not specifically require that a warning be issued to a tenant in order to end a tenancy under section 47(d) of the Act, the actions of the tenant must be so significant or unreasonable that the tenant ought to have known that the behaviour would be grounds for eviction. Alternatively, unacceptable behaviour that occurs frequently or repeatedly would be grounds for ending the tenancy under this provision. Temporary inconvenience or discomfort are not sufficient grounds to end the tenancy.

I did find the tenant to be rather loud and argumentative during the hearing; however, I found the tenant’s responses to be straightforward and I did not find any indications of deception. Therefore, I did not find any reason to doubt the tenant’s credibility. I also found the landlord’s agent to be credible; however, the agent did not have any first hand knowledge of the tenant’s actions. Rather, the landlord’s agent merely presented what

he had been provided by the landlord or strata council and told by the concierge. The landlord did not call upon the members of the strata council, the concierge, the maintenance man or other occupants as witnesses to substantiate the verbal testimony of the agent. The landlord's evidence amounted to verbal testimony that was largely disputed by the tenant.

Where one party has an onus or burden to prove their allegations and the other party provides an opposing but equally reasonable version of events, without other evidence to corroborate their position, the party with the onus has not met their burden of proof.

I find that the landlord has not provided me with sufficient evidence to find that the tenant has significantly interfered with or unreasonably disturbed other occupants or the landlord and I cancel the Notice to End Tenancy. Therefore, the tenancy shall continue.

From what I heard during the hearing, I find it appropriate to caution the parties that the landlord and the strata corporation have an obligation to repair and maintain the property as required by law; however, the tenant must not interfere with or harass maintenance workers who are performing tasks assigned to them by the landlord or strata corporation. The tenant is duly warned that interference with the landlord's right to repair and maintain the property may be grounds to end a tenancy. The tenant is at liberty to seek remedy for repairs through the landlord and if the tenant remains unsatisfied the tenant may seek to resolve the dispute by making an Application for Dispute Resolution.

As the tenant was successful with this application, the tenant is awarded the cost of the filing fee paid for this application. The tenant is authorized to make a one-time deduction of \$50.00 from a subsequent month's rent in satisfaction of this award.

Conclusion

Due to insufficient evidence, the Notice to End Tenancy is set aside and cancelled. The tenancy shall continue. The tenant is awarded the filing fee and may deduct \$50.00 from a subsequent month's rent.

February 6, 2009

Date of Decision

Dispute Resolution Officer