

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy issued for cause.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Landlord's secretary on August 6, 2009. The Landlord appeared and confirmed receipt of the hearing documents.

The Landlord, the Resident Manager, the Tenant, and the Tenant's Advocate appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Preliminary Issues:

The Landlord advised that he was attending the hearing in the presence of the Resident Property Manager, who would be providing testimony, and the Landlord's Secretary, who was recording the hearing. I informed the Landlord that he could not have his Secretary record the hearing as stipulated in Rule 9 of the *Residential Tenancy Branch Rules of Procedure*. The Landlord asked his Secretary to excuse herself from the room and I assured the Landlord that I would document all pertinent testimony and provide him with a written copy of my decision.

The Tenant appeared and advised that he was accompanied by his Advocate and a Witness. The Advocate stated that she would provide testimony if required and I informed the Tenant that the Advocate could be present throughout the hearing however his Witness would have to leave the room in accordance with Rule 11.11 of the

Residential Tenancy Branch Rules of Procedure. I advised the Tenant that we would call the Witness back if she was needed to provide testimony.

Issues(s) to be Decided

Is the Tenant entitled to an Order to cancel a 1 Month Notice to End Tenancy under section 47 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on November 1, 2004 and the current monthly rent is \$475.00 per month which includes \$20.00 for parking.

The Landlord testified that he issued a 1 Month Notice to End Tenancy on July 20, 2009 and gave it to the Resident Manager to deliver to the Tenant. The Resident Manager confirmed that he posted a one page notice to end tenancy to the Tenant's door on approximately July 20, 2009.

The Tenant testified that he received a one page, double sided notice which was posted on his door.

The Tenant's Advocate testified that on one side of the notice was page one of the 1 Month Notice to End Tenancy for Cause and on the other side was page two of the notice whereby the Landlord marked the following reasons for issuing the notice:

- Tenant has significantly interfered with or unreasonably disturbed another occupant or landlord; and
- adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant or the landlord.

The Landlord testified that he issued the 1 Month Notice to End Tenancy in direct response to the Tenant sliding a hand written note under the door at rental unit # 505 on or about July 18th or July 19th, 2009. The Landlord argued that the note the Tenant wrote was delivered to the rental unit of an elderly man who felt threatened by the note.

The Landlord and Resident Manager confirmed that since the Resident Manager took over this building in 2003 they have received only four (4) complaint letters from the Tenant and that the letters were issued by the Tenant in February 2006, December 2008, and two letters issued by the Tenant in March 2009. The Resident Manager argued that after receiving each letter he would investigate the complaints and then would inform the Tenant of the outcome the next time he happened to run into the Tenant in the hallway or around the building area.

The Landlord went on to testify that the Resident Manager had previously engaged in a verbal conversation with the Tenant whereby the Resident Manager informed the Tenant to come to him directly, day or night, if he had an issue with another tenant, and the Resident Manager would deal with the issue.

The Resident Manager testified and confirmed the Landlord's statement and clarified that the verbal conversation the Landlord was referring to took place in the earlier part of 2009. The Resident Manager could not confirm which month this verbal conversation took place or what had happened to initiate such a conversation however the Resident Manager argued that he was certain that he told the Tenant to come and see him day or night if there was an issue surrounding noise.

The Landlord provided testimony in relation to notices issued to the Tenant and argued that the Landlord provided the Tenant with only one written notification which mentions procedures or direction given to the Tenant on how to deal with issues surrounding other tenants and that this letter was issued by the Landlord to the Tenant on April 7, 2009.

The Tenant argued that he never received the April 7, 2009 letter, prior to receiving the Landlord's evidence package, and in fact he was out of town from April 3rd to April 20, 2009. The Tenant also stated that the Resident Manager never told him to come directly to the Resident Manager, day or night. The Tenant stated that the Property Manager has a note posted on his door with instructions about when the Resident

Manager is on duty and for “after duty” hours there is a notice posted to instruct tenants to contact the relief manager, who is a ninety year old man.

The Resident Manager argued that the relief manager was eighty nine and not ninety and later changed his testimony to state that he did not inform the Tenant to contact him personally, day or night.

The Landlord testified that he always signs letters he writes and that the April 7, 2009 letter was issued to the Tenant and given to the Resident Manager to deliver to the Tenant.

The Resident Manager could not provide testimony on how or when the April 7, 2009 letter was delivered to the Tenant.

The Tenant provided testimony in response to the Resident Manager’s testimony about how the Resident Manager would inform the Tenant of the outcome of investigations which were conducted in response to the Tenant’s written complaints. The Tenant argued that he recalled only one conversation with the Resident Manager which took place shortly after his March 2009 letters, when both of them were at the garbage bin. The Tenant argued that he was never told not to speak to other tenants and it was during the conversation at the garbage bin where the Resident Manager instructed the Tenant to continue to put his complaints in writing.

The Landlord testified that they had nothing to support their issuing the notice to end tenancy for the reason that the Tenant had adversely affected the quiet enjoyment, security, safety, or physical well-being of another occupant or the landlord, they had simply “generalized” their complaints and that there were never any noise or disturbance complaints against the Tenant. The Landlord argued that his “generalizations” were a result of the elderly tenant feeling threatened after receiving the letter being slid under his door by the Tenant.

The Tenant testified that he had never intended to harm or threaten anyone but that he was simply looking for a way to have the banging of doors and loud noises stop. The Tenant advised that he did not previously report these noises to the Resident Manager.

The Tenant argued that his July 21, 2009 letter to the Landlord was issued with fear and shock of feeling that he had to move. The Tenant stated that after looking for another home he has realized that his current rental unit is his home and he does not feel that he should be evicted or forced to relocate based on this occurrence.

The Tenant testified that he now understands that he needs to contact either the Resident Manager or the relief Resident Manager, whoever is on duty at the time, by telephone, if he is experiencing a noise issue, so the Manager can deal with the problem at the time it is occurring.

Analysis

A significant factor in my considerations is the credibility of the testimony and evidence before me. I must consider the evidence not on the basis of whether the testimony “carried the conviction of the truth”, but rather to assess the evidence against its consistency with the probabilities that surround the preponderance of the conditions before me. In judging credibility I am guided by:

n *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find that the Resident Manager contradicted his own testimony during the hearing when providing testimony in relation to instructions provided to the Tenant on how to report or deal with the Tenant's concerns.

I also note that Landlord testified that he always signs letters he issues, yet the April 7, 2009 letter issued to the Tenant was not signed by the Landlord and the Resident Manager could not provide testimony as to how or when this letter was delivered to the Tenant. The Tenant provided testimony that he had never seen the April 7, 2009 letter prior to receiving the Landlord's evidence.

In the circumstances before me, I find the version of events provided by the Tenant to be highly probable given the conditions that existed at the time. Considered in its totality, I favor the evidence of the Tenant over the Landlord.

This being said, I do not feel the Tenant's action of placing a letter under another tenant's door was the appropriate way to deal with the Tenant's concern. The Tenant has accepted that this action was not appropriate and has written apology letters to both the tenant and the Landlord and has testified that his actions were never intended to cause the elderly tenant worry or harm. I find that the Tenant's actions were done in an attempt to prevent future disruptions and was a result of him not being properly informed on how the Landlord and Resident Manager were dealing with his written concerns.

The Tenant received instructions from the Resident Manager during the hearing on how to respond to future concerns, whereby the Tenant was advised to call either the Resident Manager or the Relief Manager (depending on who was on shift or on call at the time), regardless of the time of day or night, and regardless of the age of the Relief Manager. The Tenant stated that he now understood that he was not to knock on the Manager's door and that he was to report his complaints via telephone at the time they occur so the Resident Manager can investigate the complaint at the time the problem is occurring.

In the absence of supporting evidence from the Landlord and Resident Manager that the Tenant was served with written notification on how to deal with problems or concerns relating to his tenancy, and in the presence of the Landlord's testimony that the 1 Month Notice to End Tenancy was issued based on a "generalization" of issues, I find the Landlord has failed to prove that the Tenant has significantly interfered with or unreasonably disturbed another occupant or landlord; and adversely affected the quiet enjoyment, security, safety, or physical well-being of another occupant or the landlord, and I hereby order the notice to be cancelled.

Conclusion

I HEREBY ORDER the 1 Month Notice to End Tenancy issued on July 20, 2009 to be cancelled and of no force or effect.

As to the noise from the hallways and from above, I find that the best possible solution lies within the willingness and abilities of the parties to communicate appropriately and wherever possible to make accommodations for one another. The Tenant is instructed to report his concerns, via telephone at the time the disturbance is happening, as instructed in today's hearing, and to ensure he follows up his concerns in writing, to the Landlord.

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 18, 2009.

Dispute Resolution Officer