



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF, O

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated June 25, 2009 as well as to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?

Background and Evidence

This tenancy started on October 1, 2005. On June 26, 2009, the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause. The grounds indicated on the Notice were as follows:

- 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; and
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The Landlord argued that one of the Tenant's minor children had bullied other children who resided in the rental property and made it unsafe for them to use the playground or common areas. The Landlord also argued that the same child also disturbed other Tenants by being confrontational, disrespectful and threatening. The Landlord claimed that it was a material term of the tenancy agreement that the Tenant and members of the Tenant's household would not cause disturbances.

The Landlord said that the Tenant also failed to supervise her children in common areas of the rental property in breach of another term of the tenancy agreement. In addition, the Landlord relied on another provision (Schedule D) which states that "inappropriate conduct in common areas that is not rectified can be grounds for terminating a tenancy."

The Landlord relied on the evidence of other tenants in the rental property who gave the following evidence.

Witness #1: This witness filed an Incident Report dated March 27, 2006 in which she claimed that Tenant's son threatened her son with a pocket knife. She also gave the Landlord 4 letters of complaint dated March 15, 2007, May 28, 2007, June 18, 2008 and July 2, 2008. In the first statement, the witness claimed that the Tenant's son would not move out of the way while she tried to park and then yelled at her after she drove by. This witness then claimed that the Tenant's son started banging on her door, yelling and ringing the doorbell for approximately 30 minutes then later claimed she tried to run him over. In her second statement, the witness claimed that the Tenant's son constantly harassed her son and would yell obscene comments at her if he saw her outside. In her third statement, the witness claimed that she saw the Tenant's son throwing pine cones and dirt at her son's window and heard him yelling insults. In her fourth statement, this witness claimed that her son was subject to further verbal insults from the Tenant's son (and some other children) while in the playground. She claimed that her son no longer felt comfortable leaving her residence for fear of being harassed. This witness said she didn't feel like she could speak to the Tenant about these events because of her "history with the Tenant." She also admitted that her son occasionally plays with the Tenant's son without incident.

Witness #2: This witness gave the Landlord four letters of complaint dated September 17, 2007, May 21, 2008, July 30, 2008 and July 20, 2009. In her first letter, the witness claimed that she saw a "parent" from the Tenant's household wearing a ski mask and purportedly approach the school nearby to try to find her son. In her second letter, the witness claimed that the Tenant's son rang her door bell late at night over a period of three weeks. She admitted that she only saw the Tenant's son on one of these occasions. She also claimed that he hung around outside late at night unsupervised, was loud and uttered a lot of profanities. In her third letter, this witness claimed that she saw the Tenant's son lighting newspapers on fire and brought it to the Tenant's attention. The witness said a few hours later her doorbell rang and she found a doll on her doorstep with its face smashed in and coloured in red to look like blood and other wounds. The witness said she believed this was done by the Tenant's son as a threat to her. In her fourth letter to the Landlord, the witness said at 10 pm one evening she saw the Tenant's son and another child run and hide behind bushes to evade a driver of a car who was looking for them. The witness said the driver of the car told her that the children had thrown a stick at the car. The witness said she told the driver where the Tenant's son lived and saw him approach that unit. The witness claimed that the Tenant's son and the other child knocked on her door at 11:45 pm that evening and wanted to talk to her about the incident but she told them to go home. The witness said that after the newspaper incident, she no longer brought her complaints to the Tenant because she didn't think the Tenant would do anything.

Witness #3: This witness claimed that the smaller children in the rental property were afraid to go outside because the Tenant's son and another child were bullying them. She claimed that in mid-June, 2009 her 5 year old daughter told her that the Tenant's son suggested she follow him on her bicycle onto the road so that she could get hit by a car. The witness claimed that the Tenant's son told her daughter that he wanted to kill her because he didn't like her and then threw a ball in her face. In another incident, this witness claimed that her daughter came home crying after the Tenant's son ripped up a crown she had made at school. The witness said her daughter also told her that on another occasion, the Tenant's son smeared her lip gloss all over her face and told her she was fat. The witness claimed that her daughter would not go outside for a week after this incident. The witness admitted that she did not have first hand knowledge of these events, that many small children play unsupervised in the rental property and that her daughter has accused other children of hurting her.

Witness #4: This witness provided one complaint letter to the Landlord dated June 25, 2009. On one occasion, the witness claimed that the Tenant's son intentionally hit her 9 year old daughter with a water balloon while she was playing on a slide. The witness also claimed that on some other occasions, her daughter has come home crying saying that the Tenant's son told her she was not welcome to play in the park area and to leave. She claimed that her daughter will not leave her home if she knows the Tenant's son is outside. The witness said she personally saw the Tenant's son throwing other children to the ground or chasing them into their homes and often heard him using foul language. This witness admitted that other tenants had approached her to see if she had issues with the Tenant's son and that she wrote her letter at the request of another tenant in the rental property.

Witness #5: This witness provided 2 complaint letters to the Landlord dated June 17, 2009 and June 23, 2009. In her first letter, this witness claimed that over the past 3 years the Tenant's son had bullied her children. She claimed that in May of 2009 the Tenant's son put mashed potatoes in one of her children's hair, chocolate on her neck and ripped up a paper that she was coloring. The witness admitted that she did not see this take place but claimed she ran to where her daughter was when she heard her screaming and her daughter showed her where the Tenant's son ran to. The witness said that she spoke with the Tenant's son about it but he denied it and later threw something at her door and laughed at her. This witness also claimed that over the past two years, the Tenant's son rang her doorbell and ran away. She said the Tenant's son admitted to ripping apart one of her children's dolls, and she saw him break a bucket and throw a ball over the fence. The witness said that she tried to talk to the Tenant on one occasion about these incidents but she was not home. In her second letter, the witness claimed that she believed the Tenant's son recently took her daughter's bicycle and hid it. She admitted that she did not see the Tenant's son take the bicycle but

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claimed that he later showed her where it was. She also claimed that the Tenant's son became confrontational with her shortly thereafter and tried to "provoke a reaction." The witness claimed that her children do not feel safe playing outside when the Tenant's son is there.

The Landlord also provided written statements from two other tenants of the rental property who did not attend the hearing to give evidence. One of the tenants claimed that one day in June 2009 she heard her child scream and that when she ran outside, her child told her that the Tenant's son had hit him twice with a hockey puck which resulted in significant bruising. The other tenant claimed that in August of 2007, the Tenant's son and other older children tried to pull her 7 year old daughter's hair, spray her with a hose and threatened to light her on fire with a lighter.

The Landlord also provided 4 written statements dated May 20, 2008 from a former caretaker(s) for the rental property. In one written statement, the caretaker claimed that she got complaints from 3 tenants that the Tenant's son and another child were ringing their door bells at night. In another statement, the caretaker claimed that she saw the Tenant's son throw a little girl's bicycle onto the slide and kick over a garbage can dumping the garbage in the process. In her third written statement, the caretaker complained about the Tenant's son's "dirty language." In her fourth statement, the caretaker claimed that another tenant's child had told her that he had seen another of the Tenant's sons smoking marijuana on the rental property. In an earlier statement dated May 12, 2006, the caretakers claimed that they were getting a number of complaints about the Tenant's children physically and verbally harassing the son of witness #6. In an e-mail dated May 25, 2008, the caretaker provided a police file number to the property manager in connection with an incident where the Tenant's son and the son of witness #7 allegedly participated in an assault on another child.

The Landlord claimed that the Tenant was given 5 warning letters between June 2006 and May 2008 advising her about the complaints and advising her that if she failed to supervise her children, the tenancy would be ended. The Landlord argued that it was a material term of the tenancy agreement that the Tenant or a member of her household not cause disturbances nor engage in any "criminal activity" on the rental property that threatens the health, safety or welfare of other tenants.

The Tenant admitted that she was not always at home to supervise her children as she worked shift work. The Tenant argued however, that many of the complaints from the other tenants in the rental property were unreliable because they were based on hearsay from their young children. The Tenant also argued that many of the complaints were based on normal disputes between children but that others were likely untrue or "conditioned" by what their parents said. The Tenant claimed that few of the complainants had approached her after the incidences in question to try to resolve the

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matter. The Tenant said that she believed some of the complainants wrote statements at the urging of another tenant who she did not get along with. The Tenant also claimed that none of the other tenants supervised their children in the play areas yet the Landlord continued to give her warning letters about her failure to supervise her children.

The Tenant further argued that her son baby sits other children in the rental property and has participated in a mentoring program at school. The Tenant said she is approachable and tried to encourage other tenants to contact her if there was a problem with her children. The Tenant said that she thought the Landlord had a policy that tenants should try to work out disputes before involving the Landlord but that it appeared to her that the Landlord had not followed its own policy in this case. The Tenant said that where complaints have been brought to her attention, she has taken them up with her children and where appropriate, disciplined them.

In support of her position the Tenant relied on the evidence of her own witness (#7). This witness admitted that she had made a complaint to the Landlord and the RCMP about the Tenant's sons bullying her son in 2006. She also admitted that at the time she was frustrated and wanted the Tenant evicted. She claimed however, that she was eventually able to resolve her differences with the Tenant and has not had any problems with the Tenant's son since that time. The witness claimed that she has seen the Tenant's son playing with younger children on the rental property and has not observed him to pick on them. The witness also claimed that there are a lot of young children running around the rental property unsupervised. The witness also recalled that it was herself and not the Tenant's son who was knocking on witness #1's door after the incident involving her car.

The Tenant also provided a "petition" signed by some other tenants of the rental property who either claimed they had had no problems with her son or said they did not know him.

Analysis

Section 28 of the Act says (in part) that a tenant is entitled to quiet enjoyment including, but not limited to the right to freedom from unreasonable disturbance and use of common areas for reasonable and lawful purposes free from significant interference.

The Parties' tenancy agreement contains a similar term which the Landlord argued was a material term because it stated that a breach could result in the tenancy being ended. The Landlord argued that there have been complaints about the Tenant's son for 3 years and that she has been given 5 warning letters but has done nothing to address

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the problem. The Landlord also argued that the other tenants' children's accounts should be considered reliable and that given the large number of them, they should indicate that the Tenant's son is bullying other children on the rental property.

I do not agree with the Landlord's argument that the hearsay evidence of the other tenants' children should be considered reliable as I find that any hearsay evidence is less reliable than firsthand evidence and should therefore be given less weight. I also disagree with the Landlord that the hearsay evidence of young children (aged 5 to 9) should not be considered less credible. I find that the evidence of young children will generally be less reliable because they can be influenced by suggestion. However, I agree with the Landlord that the large volume of complaints of a similar nature adds credibility to that evidence and must be given some weight.

The Landlord also relied on some adult witnesses who had firsthand knowledge or interactions with the Tenant's son being confrontational and yelling obscenities at them or observing the Tenant's son destroy toys and harass other children. Given the relatively large number of complaints over a two year period and the corresponding large number of warning letters given to the Tenant by the Landlord about the incidences, I find on a balance of probabilities that the Tenant's son has significantly interfered with or unreasonably disturbed other tenants of the rental property. Consequently, the Tenant's application to cancel the Notice to End Tenancy dated June 25, 2009 is dismissed. The Landlord requested and I find pursuant to s. 55(1) of the Act that he is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

Conclusion

The Tenant's application is dismissed. An Order of Possession to take effect 48 hours after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.

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: October 27, 2009.

Dispute Resolution Officer