Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated February 19, 2010. Both parties appeared and gave testimony in turn.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had "*significantly interfered with or unreasonably disturbed another occupant or the landlord*" .

Issue(s) to be Decided

The tenant is disputing the basis for the notice and the issues to be determined based on the testimony and the evidence are:

- Whether the criteria to support a One-Month Notices to End Tenancy under section 47of the *Residential Tenancy Act*, (the *Act*), has been met, or whether the notice should be cancelled on the basis that the evidence does not support the cause shown.

Burden of Proof: The burden of proof is on the landlord to establish that the notice was justified.

Preliminary Matter

At the outset of the hearing the respondent landlord confirmed the landlord's evidence was not served on the applicant.

The Residential Tenancy Rules of Procedure, Rule 4 provides that , if the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents, photographs, video or audio tape evidence the respondent intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding but if the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

In the case before me, the respondent landlord stated that they had mistakenly submitted their evidence only to the Dispute Resolution file and did not also serve the other party. I note that the *Landlord and Tenant Fact Sheet* contained in the hearing package makes it clear that "*copies of all evidence from both the applicant and the respondent and/or written notice of evidence must be served on each other and received by RTB as soon as possible*.."

Given the above, I decline to accept or consider any evidence that was not properly served on the other party. However, verbal testimony from the landlord and tenant was accepted.

Background and Evidence

The tenancy began in October 2004 and the current rent is $1,009.00. The tenant had submitted into evidence a copy of the One-Month Notice to End Tenancy for Cause dated February 19, 2010 showing an effective date of March 31, 2010, and indicating that the tenant has significantly interfered with or unreasonably disturbed the landlord or another occupant. The landlord testified

that the tenant's conduct had significantly interfered with and unreasonably disturbed the landlord and other occupants in the building. The landlord testified that there was a history of the tenant bothering other occupants and the landlord had received several complaints from more than one person about the tenant being belligerent and aggressive. The landlord testified that a previous occupant of the adjacent suite, who had since moved had complained about the tenant but the landlord had chosen not to intervene at that time. According to the landlord, the problems have continued and the tenant is now not getting along with the current neighbours. The landlord stated that the tenant has frequently engaged in conflict with the landlord as well, and had been spoken to about her conduct on more than one occasion. The landlord testified that although the tenant's abrasive manner of communicating had been ignored for a long period of time and the landlord tried to minimize contact with the tenant whenever possible, the situation had become intolerable . The landlord stated that the tenant usually expresses her dissatisfaction in a rude hostile manner when making complaints to the landlord about various problems she has had with the rental unit and in dealing with her neighbours. The landlord testified that the specific offensive behavior included:

- banging on the wall or confronting other residents,
- raising her voice or being disrespectful in addressing the landlord
- making insulting comments about the landlord's background
- challenging the landlord in an aggressive way when the landlord had come onto the property to do necessary maintenance tasks

The landlord stated that an ongoing controversy involving the location where the garbage cans must be kept had arisen between the tenant and the other residents. According to the landlord, to avoid invoking the tenant's wrath, the landlord had agreed to speak to the other resident about the problem, but the issue had not been resolved.

The landlord stated that, although several verbal warnings had been given to the tenant regarding her conduct, no written warnings were ever issued. The landlord wants the tenancy to end pursuant to the One- Month Notice.

The tenant disputed that her conduct constituted significant interference and unreasonable disturbance. The tenant stated that the landlord was terse and impatient in dealing with her and she had merely reacted to this attitude. The tenant testified that her frustration had grown because of the landlord's persistent refusal to address problems in the unit and complaints she had made about interference from the other residents. Moreover, the landlord came onto the property and even climbed around on her deck unannounced which had alarmed and angered the tenant. The tenant stated that she had been living in the unit for over five years and the landlord had even had complimented her on being a good tenant. The tenant testified that the landlord had never issued any warnings about her conduct nor that it would place her tenancy in jeopardy until suddenly receiving a Notice to End Tenancy. The tenant conceded that she is not very happy with this tenancy, but is not in a position to seek other accommodation or relocate at this time. The tenant wanted the One-Month Notice cancelled.

Analysis

I accept the landlord's testimony that complaints were made about the tenant's conduct and that verbal warnings were given. At the same time, I also note that the landlord had not issued any written warnings to the tenant.

While the activities of a tenant must not significantly interfere with nor unreasonably disturb other occupants, the threshold for terminating a tenancy on this basis is quite high.

I find that there is no doubt the landlord and one or more of the adjoining residents were of the opinion that the conduct of this tenant s qualified as unreasonable disturbance or significant interference. The question about whether or not this conduct was sufficient to warrant a sudden and abrupt end to a five-and-a-half -year tenancy is not an easy determination to make given the

conflicting verbal testimony before me. In fact, I find that there is no specific provision in the Act requiring parties to be respectful or even polite to one another. I find that the point at which acceptable assertiveness is perceived to turn to inappropriate aggression to be a very subjective assessment that could be different for each individual. I find that, a determination about whether the conduct constituted a violation of the Act would depend upon the quality and quantity of the evidence illustrating exactly what had occurred and the communications between the parties in regards to these events. In this instance, I find that, there was an absence of hard evidence to prove that the One-Month Notice to End Tenancy was supported.

That being said, it is evident that neither party is satisfied with the nature of the tenancy at this point and there has been a lack of professional interaction on the part of both the tenant and the landlord in handling problems that have arisen.

In particular, prior to giving a Notice to End Tenancy for Cause when the tenant's conduct became bothersome, I find that the landlord had an obligation to first issue a written warning to ensure that the tenant understood that she would be risking the continuation of the tenancy unless the offending conduct immediately ceased. The Act recognizes that ending a tenancy is a drastic measure to be seen as a last resort and I find that it is a fundamental principle of natural justice that a party has the right to be warned of the consequences of the behaviour and be given a fair opportunity to correct the behaviour.

On the tenant's part, it is clear that some of her outbursts may have been in response to frustration. However, the tenant had the option of first expressing her concerns to the landlord in a professional and courteous way and, if still dissatisfied, making an application for dispute resolution, as opposed to escalating the situation by communicating in an accusatory way with the landlord or taking it upon herself to rebuke the other residents.

In light of the fact that the tenant has been duly warned that acting in an aggressive way with the landlord or unreasonably interfering with the other

residents could place the future of this tenancy in serious jeopardy, I agree with some reservation to cancel this notice to end tenancy. The tenant is now aware that she will be held accountable and has been duly cautioned that a repeat of the behaviour, if proven, could be a valid basis for the landlord to issue a One-Month Notice to End the tenancy for cause in future.

To guard against misunderstandings, I find it necessary to order that the landlord and the tenant communicate any complaints to one another about issues that arise in the tenancy, briefly and simply in written form. I also find that the tenant must be ordered to refrain from approaching the other residents directly and to bring complaints to the landlord.

In regards to the tenant's concerns about the landlord's intrusions, section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I must point out that the right to quiet enjoyment also extends to the other occupants in this complex who have a right not to be disturbed or accosted by the tenant**.**

I find that section 32 of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. I find that this may require the landlord to be on site.

Under normal circumstances, when a landlord comes onto the common areas or tenant's outside property, but will not be accessing the inside of the residence, no notice would be necessary. However, if the activities may potentially interfere with the tenant's quiet enjoyment or if the landlord needs to be inside the unit for any reason, the landlord would be bound by section 29 which states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

A landlord may also inspect a rental unit on a monthly basis in accordance with subsection (1) (b).

In this instance, I find that the landlord has followed a somewhat casual way of conducting the business which did not entail communicating in written form with the tenant. While it is true that a landlord and tenant may choose to have an informal arrangement that permits the landlord to "drop by" or give verbal notice, it is clear that this particular tenancy relationship must be formalized and the Act must be closely followed by the parties to minimize discord .

I find that the landlord is entitled to come onto the property itself without notification, provided that maintenance activities relate only to the yard, driveways or common areas and the nature of the work is not disruptive to the tenant's quiet enjoyment. Otherwise, whenever the landlord intends on coming

onto the deck, working on the building structure outside the tenant's unit or entering the tenant's suite, the landlord must be prepared to follow section 28 of the Act. By giving 24 hours written notice mailed, posted on the tenant's door or handed to the tenant in person. A posted notice is deemed as served in 3 days, a mailed notice is deemed served in 5 days and service in person is immediate.

Conclusion

Based on the above, I hereby order that the One-Month Notice to End Tenancy of February 19, 2010 be cancelled and of no force nor effect.

I hereby order that in future, the parties are required to put all concerns in writing in communicating with each other.

I further order that that the tenant refrain from expressing concerns directly to the other residents.

Finally, I order that the landlord is permitted to be on the property on an occasional basis without notice , but if the activity involves being on the decks, working on the building itself, entry to the suite or entails significant noise, the landlord is required to comply with section 28 of the Act by giving 24 hours written notice.

I grant the tenant reimbursement for the $50.00 cost of filing the application and order that this amount may be paid by a one-time reduction of $50.00 in rent owed to the landlord.

April 2010 _____

Date of Decision

Dispute Resolution Officer