Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNC, OLC, AAT

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated June 25, 2010. The tenant also applied for an order to force the landlord to comply with the Act and allow access to (or from) the unit or site for the tenant or the tenant's guests. 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 of the residential property, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, and put the landlord's property at significant risk and that the tenant had engaged in illegal activity that had caused or was likely to cause damage to the landlord's property, adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or landlord and jeopardized a lawful right or interest of another occupant or 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 Notice 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.

- Whether the landlord should be ordered to comply with the Act and cease restricting access to the unit for the tenant and guests.

Burden of Proof: The burden of proof is on the landlord to establish that the notice was justified. The burden of proof is on the tenant to prove the landlord has unreasonably restricted the tenant and his guests in violation of the Act.

Background and Evidence: Notice to End Tenancy

The tenant had submitted into evidence a copy of the One-Month Notice to End Tenancy for Cause dated June 25, 2010 with effective date of August 1, 2010.

No evidence was submitted by the landlord. However the landlord offered verbal testimony that the tenant routinely shouted derogatory insults at the landlord and used foul language. The landlord testified that other residents are so fearful of this tenant's propensity for violence that they have refused to lodge formal complaints for fear of retaliation. The landlord testified that the tenant was observed escorting an individual who was barred from the premises into the complex, despite the tenant being aware that this person was not permitted in the building. The landlord stated that the One-Month Notice for Cause was also based on an incident that was video-taped showing the tenant vandalizing the banister in the stairwell and attacking another resident with a knife when he tried to intervene. The landlord testified that the police were contacted, an investigation took place and a report made, but no charges were laid. The landlord attributed this fact to the victim being too frightened of reprisals to press charges.

The tenant testified that the information presented by the landlord was "a pack of lies" and that the motive for issuing the notice was the landlord's intent to

persecute the tenant for standing up for his rights. The tenant acknowledged that he and the other resident did have an argument but parted friends. The tenant's position was that there was no valid basis to terminate his four-year tenancy for cause and the Notice should be cancelled.

Analysis: One-Month Notice

I find that the events as described by the landlord, if true, could possibly meet the criteria under section 47(1) (d)(i) and 47(1)(d)(ii) which provide that a tenancy can be ended for cause if the tenant or a person permitted on the residential property by the tenant has either significantly interfered with, or unreasonably disturbed another occupant or the landlord or has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

In regards to the tenant perpetrating an illegal activity that adversely affected the quiet enjoyment, security, safety or physical well-being of others the landlord must provide proof that activity in question is illegal, that the illegal action relates to the tenancy and prove that the illegal activity affects the quiet enjoyment, security, safety or physical well-being of other people. I find that the landlord has not proven any element contained in the criteria described above.

It is important to note that the two parties and the testimony each puts forth, do not stand on equal grounds. The reason that this is true is because one party must carry the burden of proof. In other words, the landlord seeking to end the tenancy has the onus of proving, during these proceedings, that the purported incidents occurred as stated. In situations, such as this, where the evidence consists only of contradictory and disputed verbal testimony then the party who bears the burden of proof will not likely succeed.

Given that the landlord has failed to sufficiently prove any of the causes set out in the One-Month Notice to End Tenancy for Cause, I find that the threshold has not been met to support ending the tenancy for cause under section 47of the Act. The Notice is not valid and I find that the portion of the tenant's application requesting that the One-Month Notice be cancelled must be granted and I

therefore order that the Notice is permanently cancelled and of no further force nor effect.

Background and Evidence: Order to comply

The tenant testified that the landlord is not complying with the Act and is unreasonably restricting access of the tenant's guests, including his daughter who has on occasion been denied entrance into the complex by the landlord's staff.

The tenant testified that he lives on the fifth floor of an older downtown complex with no elevator and no security buzzer for each rental unit, nor hardwiring to allow connection of telephone services to any of the rooms.

The tenant testified that the building has a controlled entry for security that involves staff of the landlord stationed in the lobby who screen all visitors wanting to visit a resident of the complex. According to the tenant a decision is then made by the landlord as to whether or not the visitor can be permitted to enter into the common area and proceed to the rental unit of the person they have come to see. The tenant stated that anyone who wishes to visit a tenant arriving before 10:00 a.m. or after 10:00 p.m. are denied entry on the basis that no unescorted visitors are permitted after hours. The tenant stated that guests escorted by a tenant are always permitted to enter even after hours when accompanied by the resident. However, because there is no means by which the resident can be made aware that there is a visitor wanting to see them the tenant cannot escort the visitor and the person is therefore stopped from entering the common areas and sent away by the landlord without the tenant even knowing that they had a visitor.

The tenant finds this to be an unreasonable restriction of guests in violation of section 30 of the Act and also contravenes the tenant's right to privacy under section 28 of the Act.

The landlord stated that this complex houses 60 residents and had a history of legal problems involving drugs, violence and gang activity. The landlord testified that the building was not maintained for many years and that there is no way to put in a security system that would allow individual buzzers from the lobby to each rental unit. The landlord stated that it is essential to maintaining security and the safety of residents that the entrance be controlled, especially after hours. Because of this need, unescorted guests who arrive before 10:00 a.m. and after 10:00 p.m. are not permitted entry. The landlord testified that, although there are two people on duty, it is not feasible to require them to personally contact the resident when a guest arrives afterhours. The landlord's position was that, given the situation, this was not unreasonably restricting guests. The landlord stated that, in fact, most of the residents are supportive of this system of security because the number of crimes and violent incidents have declined.

Analysis: Order of Compliance

Section 28 of the Act specifically provides that a tenant is entitled to quiet enjoyment including, but not limited to, the right to (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 under section 29; and (d) use of common areas for reasonable and lawful purposes, free from significant interference.

A tenant's right to access is protected by section 30(1) of the Act which states that a landlord must not unreasonably restrict access to residential property by

(a) the tenant of a rental unit that is part of the residential property, or

(b) a person permitted on the residential property by that tenant.

I find that it is evident that the landlord's method of ensuring security through a manual "controlled entry" system does a) feature an inherent infringement on the tenant's expectation of privacy and b) constitutes an imposed restriction on the tenant's right to have visitors. The question to be determined is whether or not

the infringement deprives the tenant of *reasonable* privacy and whether the landlord's restriction of guests is *unreasonable.*

In defining "unreasonable" *Black's Law Dictionary* includes the following words: irrational; foolish; unwise; absurd; preposterous; immoderate; exorbitant; capricious; arbitrary.

I find that, to the tenant, the above definition would seem to perfectly describe the landlord's actions regarding his situation. However, I find that the landlord would likely be of the opinion that none of the above words are applicable to the policy being followed in the interest of security for the residents.

I find that under the current process a tenant is at liberty to welcome any visitor but afterhours this liberty is contingent upon the tenant having advanced knowledge that the individual would be arriving at the precise time and being on-hand to escort the visitor. So the question before me now is:

> Is it reasonable to impose a system in which the tenant is required to know in advance who will be visiting and when the visitor is going to arrive and then, after that, be required to await in person at the entrance to "escort" their guest?

On the other hand, the problem for this landlord if visitors were permitted to enter at will on their word, is that the landlord would have no means to ensure that a visitor arriving, particularly after hours, actually intended to visit the tenant identified or whether they were there for another nefarious purpose.

However, the problem of preventing unauthorized entry to residential buildings is a universal issue for every landlord in the province operating multi-unit complexes. Concerns about thefts, assaults, vandalism, squatters, drug activity or gangs are not unique to this landlord nor this complex. Financial challenges are also a common limitation. However, landlords have been required to find a means by which security can be ensured without violating the Act or unreasonably restricting a tenant's right to have visitors.

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I find that any system, however fairly and consistently administered, that entails having a third party send a tenant's arriving guest away without the tenant's knowledge, would constitute an unreasonable restriction unless the tenant was fully agreeable to this process. This tenant is not.

I do not accept the landlord's argument that restricting visitors is critical to avoid disturbing other residents. "Business hours" are not necessarily applicable to every individual's lifestyle. Whether the tenant is a shift-worker or merely likes to keep odd hours, a tenant is entitled to possession of the rental unit for 24 hours of every day and under the Act is entitled to enjoy their rental unit as they see fit, provided they do not significantly interfere with or unreasonably disturb others. Under the Act, a tenant is also responsible for the conduct of his or her guests. If others are unreasonably disturbed by a tenant or by persons permitted in the unit by the tenant, there are provisions under the Act to deal with this.

I find that regardless of the landlord's operational limitations, financial constraints, deficiencies in the premises or other material factors, the tenant's right under section 30(1)(b) must be preserved. If the landlord feels it necessary to impose a onerous process whereby the entry and exit of people are being monitored manually or otherwise, it is incumbent upon the landlord to ensure that the tenant has a means of knowing that a visitor is seeking the tenant.

Notwithstanding the above, I am not prepared to issue an order that would require the landlord's to cease its current practice, because I do not have an alternative to suggest that would be workable for the landlord. If there was no controlled entry, this would be likely to not work well for the tenants at large.

Therefore, I find that, as a compromise, this tenant will be permitted to give the landlord a written list of named individuals who the tenant wishes to be permitted entry to visit him after hours and the landlord will be required to grant entry to the building to these specific individuals. The tenant is cautioned that the visitor or the tenant must not unreasonably disturb others and the tenant will be held accountable for the conduct of the guest as the Act provides.

Conclusion

I hereby order that the One-Month Notice dated June 25, 2010 is cancelled and of no force nor effect.

I hereby order that the tenant will be permitted to forward a written list of individuals to the landlord who the tenant will allow to visit him after hours and the landlord will be required to grant entry to these individuals unless there is a valid and justified reason not to do so.

July 2010 _____

Date of Decision Dispute Resolution Officer