

DECISION

Dispute codes CNC, FF

Introduction

This hearing was convened in response to an application filed on September 02, 2010 by the tenant to cancel a 1 Month Notice to End Tenancy for Cause (the Notice to End) dated August 31, 2010 with the reasons:

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.*

Both the tenant and the landlord appeared in the conference call and each participated in the hearing via submissions, witnesses and affirmed / sworn testimony and questions.

For this type of application, the onus is on the landlord to prove the Notice to End was issued for valid and sufficient reasons, and that at least one reason must constitute sufficient cause for the Notice to be valid. The landlord is not required to prove all reasons stipulated for ending the tenancy.

At the outset of the hearing the landlord verbally requested an Order of Possession should I uphold the landlord's Notice to End.

Issue(s) to be decided

Is there *sufficient* cause to end the tenancy?

Is the landlord entitled to an Order of Possession?

Background and evidence

The relevant evidence in this matter is as follows. This tenancy began approximately 4 years ago. The tenant occupies a rental unit in a subsidized housing complex operated

by the landlord. The tenants are seniors aged 74 and 86. The landlord testified that they have responded to complaints from the other senior tenants in the building. The complaints are in respect to the apparent son of the applicant tenants (tenant's son) whom does not reside in the complex. The tenants (tenant's daughter) testified that the son is a drug user and has intimidated and harassed his parents for money for the last couple of years. The conduct of this individual has reportedly also been threatening to some of the tenants of the complex and has made them feel concern for their safety and the safety of the applicants in this matter. Some of the tenants feel intimidated to be in the common areas, and in the least the applicant's son has made them feel uncomfortable outside their suites. He has also harassed other tenants by telephoning them to gain access, or to relay information to his parents, as well as 'buzzing' other tenants and intimidating them into allowing him into the building or threatening them if they deny him access. Once in the building the individual has been heard and seen banging on the door of the applicants to gain entry. The immediate next door occupant has heard screaming and yelling from inside the applicant's suite. He has been the subject of breaking into the building and numerous attendances by Police at the request of tenants and the applicants themselves. In general, the other tenants are fed up and stressed over the repeated lack of control of the applicant's son. Many tenant's want the applicants to vacate. The landlord provided an abundance of letters from other tenants as well as a 'client report / incident report' of the applicant's home support service – all of which have been considered.

The applicants claim that they have been trying to keep their son out of the building via community resources and the Police, and are equally concerned for the other tenants. However, the son has a serious problem and takes advantage of the ease with which he can gain access to the residential property and harass them and others. The applicant thinks the landlord could do more to help the situation for all tenants by more reporting to police or obtaining a restraining order to aid Police. The applicants claim that recently (September 1, 2010) the son has been sent to a court-ordered treatment centre for 10 months, and that Police have the authority to arrest him if he leaves. The applicant has relayed the information to the landlord but neglected to communicate with the tenants in the building.

The landlord and the tenants of the building state that they lack confidence in the recent measures for the son, and do not believe that the matter is now resolved. They think that the applicant's presence in the building remains as a draw for the son to return and cause them further disruption – despite a perceived absence of son over the past month to the tenants – and for this reason the tenants, and the landlord, want the applicants to vacate.

The landlord provided some of the tenants of the residential property to give testimonial evidence as follows:

Witness WS – Tenant in building

Under affirmation the witness provided that he met the applicant's son in the building following a purported break in. Upon questioning the son, he was told that he had just delivered a "card" to his parents in the building. The witness is aware that other tenants have had experience with the son – causing them concern for their personal safety. He wants the applicants to vacate.

Witness MG – Tenant in building – direct neighbour to applicants.

Under affirmation the witness provided that since June 2010 she has heard screaming and yelling emanating from the applicant's suite and has felt fearful to exit her suite- has been "terrified". She has heard commotion in the hallway but has not seen who it is. Out of personal concern she has called Police more than once. She has not heard anything of concern from the applicant's suite for several weeks. She wants the applicants to vacate.

Witness EH – Tenant in building

Under affirmation the witness provided that she has repeatedly received phone calls from the applicant's son for her to go to the applicant and tell them to hang up their phone as they were denying him access by phone. She wants the applicants to vacate.

Witness DB – Tenant in building

Under affirmation the witness provided that she resides on the same floor as the applicants. On one occasion she heard a 'ruckus' and admitted 3 Police officers into the building which she later witnessed taking the applicant's son away . She wants the applicants to vacate.

Witness PG – Tenant in building

Under affirmation the witness provided that he has twice phoned Police when hearing yelling and sounds of fighting late at night associated with the applicant's suite. He saw the son being taken away by Police in handcuffs. He is aware that other tenants feel scared and are worried. He wants the applicants to vacate despite a recent reprieve in the commotion surrounding the applicant's unit..

Witness MB – Tenant in building

Under affirmation the witness provided that she was compelled to permit "several young boys – late teens" into the building late one night, and having done so the boys were

then called over by the applicants to their suite. The witness testified of disturbances at late night of the son and other individuals knocking on the doors of tenants.

Analysis

I have considered all evidence in this matter. It is clear from the testimony of the landlord, the tenants of the building, and the applicant tenants themselves that the conduct of the applicant's son has, until lately, *significantly disturbed the applicants, the landlord and the tenants of the residential property; and, that this individual has seriously jeopardized their safety*. It is not clear that the applicants have actively *permitted* their son on the property. On preponderance of the testimonial evidence of all parties as well as the document evidence of the tenant and the landlord I find that the applicants have actively worked to deny their son (the reported source of the problem in this matter) access to the building, and have actively tried to have him removed from the property when found. I find that the landlord's own evidence clearly speaks to these efforts by the applicant in the landlord's "Client Report / incident report" dating back to November 2008. The report clearly references that as early as this date the applicant actively sought to restrict their son's access to the building, requested Police and personally called Police. At the end of the report, it states that the applicant wants for the landlord to ban his son.

On the face of the evidence I cannot find that the applicants in this matter *permitted a person on the property* – giving rise to circumstances for the landlord to issue a Notice to End Tenancy for Cause, as required by Section 47 of the Residential Tenancy Act (the Act). On a balance of probabilities I prefer the evidence of the applicant that they have repeatedly and actively sought to deny their son access to the residential property and sought help for their problem son. I find the evidence in support of ending the tenancy is insufficient for me to grant the landlord an Order of Possession. The landlord has not met their onus that they issued the Notice to End for the reasons:

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.*

As a result, I am unable to uphold the landlord's Notice to End and the tenant's application to cancel the landlord's Notice to End **is granted**. The Notice to End dated August 31, 2010 is rendered null and of no effect. Accordingly I set aside the landlord's Notice to End and their request for an Order of Possession.

The attention of both parties is drawn to the fact that the landlord is at liberty to issue a new and Notice to End Tenancy for Cause for sufficient reasons.

As the applicant has succeeded in their application to have the landlord's Notice to End set aside, I hereby Order that the tenant may withhold the filing fee paid for this application of \$50 from the next regular payment of monthly rent.

Conclusion

The tenant's application is granted. **I Order** the landlord's Notice to End is of no effect and the tenancy continues. **I Order** the tenant may deduct \$50 from a future rent.

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*.
