



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

INTERIM DECISION

Dispute Codes:

CNC, MNDC, OLC

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; for a monetary Order for money owed or compensation for damage or loss; an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and for an Order suspending or setting conditions on the Landlord's right to enter the rental unit.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make submissions to me.

There was insufficient time to conclude the hearing on October 27, 2010. The parties were advised that I would render an interim decision regarding the Notice to End Tenancy; that the hearing would be reconvened to discuss the outstanding issues; and that a decision regarding all issues other than the Notice to End Tenancy will be made after the hearing has been reconvened.

Issue(s) to be Decided

The issue to be decided in this interim decision is whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on December 15, 2007 and that the Tenant is currently required to pay monthly rent of \$809.00, in advance, by the last day of each month.

The Landlord and the Tenant agree that a One Month Notice to End Tenancy for Cause was personally served to the Tenant on September 15, 2010, which declared that she must vacate the rental unit by October 31, 2010. The reasons stated for ending the tenancy on the Notice to End Tenancy were that the Tenant or a person permitted on

the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; and that the Tenant has breached a material term of the tenancy that was not corrected within a reasonable time.

The Landlord stated that she believes she has grounds to end this tenancy because the Tenant has significantly interfered with or unreasonably disturbed the landlord by being verbally abusive to her. The Landlord contends that whenever they communicate the Tenant is belligerent and rude; that she often grunts at her; that she often yells and swears; and that she is extremely aggressive towards the Landlord. She stated that when the Tenant now speaks to her the Landlord turns her back on the Tenant and that she now tries to only communicate with the Tenant in writing.

The Landlord was repeatedly asked to provide specific examples of incidents and was only able to recall three incidents.

The Landlord stated that "a few months ago" she was working in the garden when the Tenant yelled at her from a common balcony about her fridge not working properly; that she ran up to the Tenant's rental unit; and that the Tenant continued yelling, swearing, and "frothing at the mouth".

The Landlord stated that on September 23, 2010 she was conducting a monthly inspection of the rental unit and she brought a witness with her as a safety precaution. She stated that the Tenant would not allow the witness to enter her rental unit and insisted that the witness remain at the front door. She stated that throughout the inspection the Tenant complained to the witness about the lack of repairs in the rental unit.

The Landlord stated that on one occasion the Tenant contacted her to report that her power was out; that the Landlord waited fifteen minutes before responding as she needed to find a witness to accompany her; that when she arrived the Tenant was yelling at her about the delay; and that the witness fixed the electrical problem.

The Landlord declined the opportunity to call witnesses to support her allegations.

The Tenant stated that it is the Landlord who is belligerent and aggressive in their interactions. She stated that she now also arranges to have a witness present when the Landlord is conducting a monthly inspection, which is sometimes difficult to arrange.

She stated that she did not permit the Landlord's witness to enter her rental unit on September 23, 2010 as the Landlord has regularly brought a variety of witnesses through her rental unit with her when she conducts monthly inspections and she is concerned about the number of people who enter her rental unit.

She stated that when she had a problem with the power in her rental unit the Landlord was the person who was yelling. She stated that the Landlord was so verbally abusive on that date the male who had come with the Landlord told the Landlord to back away from the Tenant.

The Tenant submitted a letter from a female who stated that she was present in the Tenant's rental unit when the Landlord was conducting a monthly inspection; that the Tenant did not permit the Landlord's witness to enter the rental unit; that she, the Tenant, and the witness who was waiting at the front door spoke about the problems with the fridge; that when the Landlord first entered the rental unit she rushed up to the Tenant and was yelling at her from approximately one foot away; and that spit was "coming out of her mouth".

The Witness with the initials "A.S." stated that she is a former Tenant of this Residential complex; that she has often observed the Landlord yelling at tenants, including this Tenant, that she has never observed the Tenant yelling at the Landlord; and that she had a reasonable relationship with the Landlord with the exception of one dispute over the quality of the water. The Landlord agreed that she had a reasonable relationship with this witness, however she contends that the witness is lying when she says that the Landlord yells at tenants.

The Witness with the initials "M.K." stated that she is a friend of the Tenant; that she has heard the Landlord banging on a door beside the Tenant's rental unit screaming profanities; and that she has been inside the Tenant's rental unit when she overheard the Landlord yelling at the Tenant while the Tenant stood quietly. The Landlord contends that the witness is lying about her observations.

The Witness with the initials "S.G." stated that she is a former Tenant of this Residential complex; that she has often observed the Landlord yelling at this Tenant, that she has never observed the Tenant yelling at the Landlord; and that she had an acrimonious relationship with the Landlord. The Landlord agreed that parties have been involved in several disputes and she contends that the witness is lying when she says that the Landlord yells at the Tenant.

The Tenant submitted other letters attesting to the character of the Landlord, however those letters do not shed any light on the nature of the relationship between the Landlord and this Tenant.

The Landlord stated that she believes she has grounds to end this tenancy because the Tenant has seriously jeopardized the health or safety or lawful interest of the Landlord. She bases this belief on the fact that she was advised by the police to bring a camera, a cell phone, and a witness with her whenever she accesses the Tenant's rental unit.

The Landlord stated that she believes she has grounds to end this tenancy because the

Tenant has breached a material term of the tenancy that was not corrected within a reasonable time. She stated that the Landlord breached a material term of the tenancy agreement when she left personal property on the common balcony, although she acknowledges that the property has now been removed. She stated that the Tenant has breached a material term of the tenancy because she leaves the door to her rental unit open and because she smokes in the rental unit. The Landlord acknowledged that there is nothing in her tenancy agreement that requires the Tenant to leave the door to her rental unit closed. The Landlord acknowledged that there is nothing in her tenancy agreement that stipulates the Tenant cannot smoke in the rental unit although she contends it was identified as a non-smoking unit in the advertisement.

The Tenant stated that she does smoke in her rental unit on occasion; that there is nothing in her tenancy agreement that prevents her from smoking in the rental unit; and that the parties did not agree that she could not smoke in the rental unit when this tenancy began. She stated that prior to moving into the rental unit she became aware of a vacancy in the complex and she approached the Landlord on that basis. She stated that she never saw an advertisement for the rental unit so she does not know whether smoking was addressed in the advertisement.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has provided insufficient evidence to show that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. I find, on the balance of probabilities, that it is the Landlord that is behaving in a verbally abusive and unprofessional manner towards the Tenant. In reaching this conclusion, I was heavily influenced by the evidence of the witnesses, who consistently describe the Landlord as being verbally abusive toward the Tenant. In reaching this conclusion I was further influenced by the absence of witnesses who corroborate the Landlord's testimony that the Tenant yells at her. Given that the Landlord has brought witnesses with her when she has conducted inspections of the Tenant's rental unit, I find it unusual that the Landlord has not provided evidence from those witnesses.

In determining that the Landlord is significantly contributing to the acrimonious relationship between these parties, I was also influenced by my observations of the Landlord's behaviour. I find that Landlord's admission that she turns her back on the Tenant when the Tenant speaks to her to be an inappropriate method of communication. On two occasions at the hearing the Landlord stated that the Tenant was "frothing at the mouth" when speaking with the Landlord. I find this term to be highly disrespectful to the Tenant and is likely representative of the manner in which the Landlord communicates with the Landlord.

After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has provided insufficient evidence to show that the Tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord. Although the police may have recommended that the Landlord bring a cell phone, a

camera, and a witness with her when she meets with the Tenant, this does not corroborate the Landlord's belief that her health or safety is jeopardized by the Tenant. Rather, I find those to be the types of recommendations that police would typically give when a person expresses concerns about another party and I suspect the police would make those recommendations even if the concerns had not been substantiated. In these circumstances the Landlord has not convinced me that the Tenant poses a risk to the Landlord's health or safety and she has submitted no evidence to show that the police believe that the Tenant poses a risk to the Landlord's health or safety.

After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has provided insufficient evidence to show that the Tenant has breached a material term of the tenancy agreement. In reaching this conclusion I find that the Landlord has submitted no evidence to corroborate her statement that the parties had an agreement that the Tenant could not smoke in the rental unit or that she could not leave her door to the rental unit open. As the Landlord has not established that smoking in the rental unit and leaving a door open is a breach of a material term, I cannot conclude that the Tenant has breached a material term of the tenancy agreement when she left the door open or when she smoked in the rental unit.

I find that I do not need to determine whether leaving personal property on a common balcony breaches a material term of the tenancy agreement, as the Tenant has complied with the Landlord's request to remove her personal property from the common area.

Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that she has grounds to end this tenancy pursuant to sections 47(1)(d)(i), 47(1)(d)(ii), and 47(1)(h) of the *Act*, I hereby set aside the One Month Notice to End Tenancy, dated September 15, 2010, and I order that this tenancy continue until it is ended in accordance with the *Act*.

This interim 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*.

The Residential Tenancy Branch will mail a Notice of Reconvened Hearing to each party. The parties are expected to attend the teleconference on the date and time specified on that Notice of Reconvened Hearing.

Dated: October 29, 2010.

Dispute Resolution Officer