



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause and for Orders for the landlord to comply with the Act, regulations or tenancy agreement. The tenant was represented by an agent. Both parties appeared or were represented at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party. Both parties confirmed service of documents upon them.

Issues(s) to be Decided

1. Should the Notice to End Tenancy be upheld or cancelled?
2. Has the tenant established that it necessary to issue Orders to the landlord for compliance with the Act, regulations or tenancy agreement?

Background and Evidence

I was provided the following undisputed evidence. The tenant and the tenant's agent had been living in the rental unit since April 2003. The agent moved out in June 2010 and starting July 1, 2010 a new tenancy commenced between the tenant and the landlord. The tenant's agent still visits the tenant at the residential property. On October 5, 2010 the landlord issued a *1 Month Notice to End Tenancy for Cause* (the Notice) and placed it in the tenant's mailbox. The tenant disputed the Notice within the time limit permitted by the Act. The Notice indicates two reasons for ending the tenancy which are:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord; and,
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord submitted that the tenant has disturbed other tenants of the property by placing nuisance phone calls, making rude gestures, spreading rumours, banging on the ceiling and being drunk in common areas. The landlord also submitted that the tenant's behaviour has been disrespectful, confrontational and troublesome for the landlord's assistant and contractor who have both had dealings with the tenant. The landlord submitted that the tenant's agent left intimidating phone messages for the landlord on October 4, 2010 which resulted in police involvement. During a follow up visit on October 5, 2010 the police reported to the landlord that the tenant was inebriated and not making much sense.

In addition to the above, the landlord alleged that the tenant has breached the tenancy agreement by having a second peephole installed.

Provided as evidence by the landlord were copies of letters from other tenants, the landlord's assistant and the landlord's contractor complaining of disturbing behaviour by the tenant and the tenant's agent. Also provided as evidence by the landlord were copies of the landlord's letter to the tenant's agent in December 2009; the tenancy agreement; a photograph of the tenant's door; and, a tape recording of the messages left by the tenant's agent on October 4, 2010.

The tenant's agent responded to each of the letters of complaint submitted by the landlord. The agent testified that he was present during some of the alleged incidents and did not recall the incidents as described by the complainants. Rather, the agent indicated that there was a friendly relationship with many of the complainants. With respect to other complaints the agent denied they happened or unable to explain why the complainants would make the statements appearing in the letters. The agent acknowledged that he was out of line in leaving the telephone messages for the landlord and assured me that such conduct would not be repeated.

The agent acknowledged the landlord had denied the tenant's request for a second peephole and that the agent approached a resident handyman in the building who lent the agent tools to install the second peephole. The agent acknowledged that in hindsight the landlord's wishes should have been complied with.

Upon enquiry, the landlord testified that the tenant's behaviour was unlikely to change as just last week the landlord heard from another resident that the tenant was passed out cold on the floor in her unit. The agent vehemently denied this and explained that the tenant was asleep in her bedroom and that the other resident did not even enter the upstairs of the rental unit and would have no knowledge of the tenant being on the floor. Upon further enquiry, the landlord stated that the other resident claimed to have heard a loud bang the evening before.

The agent was uncertain as to the tenant's request for compliance by the landlord and I did not hear further testimony with respect to that matter.

Provided as evidence by the tenant was a copy of the Notice, the tenant's written submission, and a letter from the landlord concerning the parking space.

Analysis

Where a Notice to End Tenancy is disputed the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reasons given on the Notice. Upon review of the evidence before me, I make the following findings.

With respect to the complaints from the former tenant of the upper unit I place very little weight on this evidence. The complaints pertain to incidents in December 2009 and January 2010. The landlord wrote a warning letter to the tenant's agent, not the tenant, warning him of the complaint. Then in July 2010 the landlord and tenant enter into a tenancy agreement. I find it unlikely that the landlord would enter into a new tenancy agreement with the tenant if there were on-going problems with the tenant's behaviour at that time.

With respect to the letter from the occupant of unit 103, I find the neighbour's complaint to be not sufficiently specific. The neighbour alleges the neighbours have spread rumours about her but does not specify what the rumours were, when they were made, how this impacted her and the like. The agent did not know the nature of this reference to rumours. I find such a vague complaint to be almost impossible to respond to or refute and I give this evidence very little weight.

With respect to the letter from the occupant of unit 100, I find the neighbour's complaint to be not sufficiently specific. The neighbour complains of nuisance phone calls over the past two and a half years but does not elaborate on why they are considered a nuisance. The agent claimed that he spoke with this neighbour and the neighbour claims he did not say of the statements made in the letter and just signed the letter presented to him. The agent testified that this neighbour also calls the tenant on occasion and that the neighbour had described the tenant's behaviour as good lately. In the absence of testimony from this witness and given the vague nature of the complaint I give this evidence very much weight.

With respect to the letter from the occupant of unit 101, I find the following. The authors of the letter speak of hearing complaints from other tenants against the tenant and reiterate the landlord's submission that the tenant was warned in writing to cease calling other tenants. I find that it is upon the landlord or the other tenants to write their own complaint letter and I do not rely upon the submissions of the occupants of 101 to conclude that other tenants have been disturbed. It appears the only observation from the tenants in unit 101 is that they have seen the tenant wandering the halls under the influence of alcohol. The authors did not give specific dates or times when this behaviour was observed and the agent denied such statements to be true. I find this complaint to lack sufficient specific information that would enable the tenant to respond to this complaint and I give this evidence little weight.

The letter from the landlord's assistant describes that he is ill at ease being around the tenant but does not specify why he feels ill at ease and what sort of conduct has caused him to feel this way. The assistant described that on October 3, 2010 the tenant uttered threats towards the landlord but did not describe what the threats were. The assistant described how the tenant was disrespectful overall and called the assistant a liar. The agent claims he was present on October 3, 2010 and did not hear the tenant call the assistant a liar. I find the assistant's descriptions of the tenant's conduct are not sufficiently specific to which the tenant can effectively respond and in the absence of this witness at the hearing I give this evidence little weight.

The letter from the landlord's contractor describes the tenant as having a "troublesome personality" but does not describe what is meant by this or the reasons he has reached this conclusion. The contractor states that he does not look forward to working in the tenant's unit but that he does so as his business is his livelihood. I find the contractor's statements are more of a character attack and are not sufficiently clear or specific. I find the contractor's characterizations to be almost impossible to respond to and without evidence that the tenant has precluded the contractor from carrying out required repairs I give this evidence little weight.

During the hearing I noted that the typewritten letters written by the occupants of units 100 and 101, the landlord's assistant and the landlord's contractor appear to be written using the same computer as they have the same font, spacing, salutation, complimentary closing, page layout and are all dated between October 22 and 25, 2010. I also noted that the landlord's letters also appeared similar to the complaint letters. Further, the agent had alleged that he spoke with the occupant of unit 100 and that occupant had told him he did not make all of the statements in the letter but did sign a letter prepared for his signature. Since the landlord did not refute the agent's testimony that the letter was prepared for the occupant of unit 100 to sign I asked the landlord if she had typed the letters for the signature of the other tenants, assistant and contractor. The landlord's response was that she had not.

While I have little evidence to refute the landlord's statement that she, herself, did not type the letters in question, I was left with the impression that the landlord was not being forthcoming with an explanation as to why the letters would all appear so similar. I was also concerned about the landlord's reliance upon another tenant's assumption that the tenant was passed out on the floor based on that tenant hearing a loud bang the night before. Therefore, I find the landlord's submissions to be of questionable veracity and have been given little weight, for the reasons explained above.

Nor was I swayed by the landlord's report that the RCMP had found the tenant incoherent on October 5, 2010 as I do not find being inebriated in one's living accommodation is in itself indicative that the tenant will disturb other tenants or the landlord.

Given all of the evidence before me, I find it likely that the tenant likely drinks to excess and may be annoying other tenants in the building and the landlord's assistant and contractor. I find it likely that the tenant became frustrated with losing the garage opener and spoke in anger to the landlord's assistant. I am satisfied this behaviour

must cease in order for the tenancy to continue. However, I find much of this dispute has could have been avoided with more meaningful and respectful communication by both parties. As provided in the Fact Sheet: *Resolving a Dispute on Your Own*

Most problems arise because someone does not realize they have broken the tenancy agreement or they do not know their rights or responsibilities under the law.

Let the other person know you have a problem. Either tell the other person directly or prepare a letter that explains the issue.

Although the landlord submitted that the tenant had been warned in writing in December 2009, I find that this warning letter pertained to a specific complaint by a particular tenant and the warning letter was addressed only to the agent, as the former co-tenant. The warning letter is not addressed to the tenant at all and I do not find the specific nature of the warning letter pertains to the conduct alluded to by the other tenants, the landlord's assistant or the landlord's contractor that has been submitted as evidence by the landlord.

With respect to the phone calls made by the agent to the landlord I did not find the first phone call threatening or intimidating. The second phone call does contain a statement that the agent will come to the landlord's house if the landlord does not give the garage opener back to the tenant. I find this statement is certainly inappropriate and conceivably threatening. However, given the tone and content of the entire message I do not find the statement to be significantly concerning or threatening.

In summary, I cancel the Notice to End Tenancy for Cause as I did not find the landlord provided evidence of sufficient weight to establish the tenancy must end, the landlord has failed to give the tenant a written warning letter with respect to the tenant's behaviour, and upon the agent's assurance that he will not communicate with the

landlord in an inappropriate manner. However, I find that it necessary to warn the tenant that disturbing behaviour may be grounds to end the tenancy in the future.

By way of this decision the tenant is warned that under the Act, a tenant, or a person permitted on the residential property by the tenant, must not unreasonably disturb or significantly interfere with other occupants or the landlord. A tenant, or a person permitted on the residential property by the tenant, must not seriously jeopardize the health or safety or lawful right of another occupant or the landlord. A future violation of these provisions is grounds for ending the tenancy.

I accept that installing a second peephole was not authorized by the landlord and constitutes a violation of the tenancy agreement and the tenant is responsible for remediating the damage. However, I do not find the damage to be significant damage upon which to end the tenancy. It is strongly suggested that the landlord and tenant communicate about the appropriate remedy for repairing the door.

As the agent was unable to specify the Orders the tenant was seeking with this decision I dismiss this portion of the tenant's application.

Conclusion

The tenant's request to cancel the Notice to End Tenancy is granted with the effect that this tenancy continues. However, this decision serves as a warning to the tenant that she must not disturb or interfere with other occupants or the landlord's ability to conduct business as a landlord in the future. A future violation will be considered grounds for ending the tenancy. The tenant's request for Orders for compliance against the landlord are dismissed.

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: November 05, 2010.

Dispute Resolution Officer