



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MT, CNC, FF, O

Introduction

This matter dealt with an application by the tenants for more time to cancel a Notice to End Tenancy and to cancel the One Month Notice to End Tenancy for cause. The tenants also seek to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the landlord on February 04, 2011. The landlord confirmed receipt of the hearing documents.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witnesses, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Preliminary Issues

The tenants have applied for more time to cancel the Notice to End Tenancy. As the tenants received the Notice on January 28, 2011 and applied for Dispute Resolution on February 04, 2011 they have applied to cancel the Notice to End Tenancy within the required time frame and no decision is required from me in connection with this section of their claim.

Issue(s) to be Decided

- Are the tenants entitled to have the Notice to End Tenancy cancelled?

Background and Evidence

Both parties agree that this tenancy started on August 15, 2005. Rent for this unit is \$562.00 per month and is due on the first of each month. The tenants paid a security deposit of \$250.00 on August 08, 2005.

The landlords' agent testifies that the tenants were served with a One Month Notice to End Tenancy for cause. This notice has an effective date of February 28, 2011 and gave the following two reasons to end the tenancy.

The tenant or a person permitted on the property by the tenant has:

1. Significantly interfered with or unreasonable disturbed another occupant or the landlord.
2. Seriously jeopardized the health, safety or lawful right of another occupant or the landlord.

The landlords' agent testifies that the building manager has received a number of complaints from other tenants concerning the male tenants' behaviour. At first the complaints stemmed from the tenant's television set being too loud and a neighbouring tenant complained about the noise issue due to this. The tenants did move their television from the wall at that time. Since then the tenants neighbour and other tenants have complained about the male tenants' actions and behaviours toward them. The landlords' agent testifies that when she went to the building she had six tenants making complaints about the male tenants' behaviour. These tenants have provided letters to the landlord and some are in evidence.

The tenants neighbour has sent repeated letters to the landlords which state she feels threatened, harassed and has privacy issue with this male tenant. On one occasion the Police were called. The landlords' agent testifies that there is a situation in the building caused by the male tenant who has used profane language towards other tenants and has acted in an intimidating manner by scowling and staring at other tenants. The landlord states other tenants are now contemplating moving from the building.

The landlord called their first witness who is a tenant residing at the building. He states his problem with the male tenant started about five years ago when the male tenant told him he patrols the building at night and has a knife wrapped in newspaper. The witness states this male tenant tried to sell him a gas can and magazines on two separate occasions and he did buy the

magazines because he thought he must need the money. Later the witness states the male tenant confronted him at the mail boxes and accused him of killing women and babies. The witness states he flew in the last war and as part of his job he did have to bomb Germany but he took exception to the male tenant making this accusations about him. The witness states that every time he walks by the male tenant he scowls at him.

The tenant was given the opportunity to cross exam this witness but stated that it was the witness how stared at him and asked him why he stayed home while his wife went to work. He states his life is not the witnesses business and so he did say to him that he killed babies and women while in the war.

The landlord called their second witness. This witness is also a tenant at the building and resides next door to the applicants. The landlord asks the witness to explain the male tenants' behaviour towards her. The witness states that due to the male tenants' actions she no longer feels she has any privacy. She states she cannot leave or enter her home without him coming out of his unit to watch her. She states he swears at her all the time and uses profanities about her. The witness states that on January 07 he threatened her by saying she only had a week left to live there and had better watch herself. The witness states she called the police and they came to talk to this tenant. She states she decided not to press charges against him as she was worried about how he would react.

The witness states she found out on line that the male tenant has a criminal record and has been charged with threatening behaviour and the use of a firearm so she feels extremely unsafe and scared living in the same building with him.

The witness states she has to experience the male tenant banging on her wall. She states she has had a chest infection which has caused her to cough. When she coughs he bangs on the wall. The tenant also states she suffers from snoring and the tenant bangs on the wall for this. The witness letter to the landlord details that the tenant bangs on the wall when she goes about her everyday life such as when the kettle boils, when she flushes her toilet, when she vacuums, when she answers her door, listens to her radio and when she opens and closes doors in her unit. The tenant testifies that other tenants have experienced name calling and feel intimidated by this male tenant. She states he is a rude, inconsiderate and invasive neighbour.

The tenants were given the opportunity to cross exam this witness. The male tenant testifies that he has never sworn at this witness and he only goes out into the hallway when she is vacuuming at night.

The tenants testify that their lawyer sent a letter to the manager concerning his allegations against them and after that letter went out they received the eviction Notice. The tenant's testify that the manager asked him if he was making any drugs in his unit and would not state who had made these allegations. The tenants' testify that they have purchased a home and will be moving from the rental unit on April 01, 2011.

The landlords' agent requests an Order of Possession to take effect on the effective date of the Notice as they are fearful for the other tenants safety.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses. From the evidence presented I find the male tenants actions towards other tenants, particularly his female neighbor, to be construed as threatening and vexatious behavior. The witness has testified that she feels intimidated and threatened by the male tenants' actions, comments and behavior towards her and states she feels harassed by this male tenant.

Every tenant has a right to quiet enjoyment of their rental unit which also includes any common areas of the building. Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including but not limited to reasonable privacy freedom from unreasonable disturbances and the use of common areas free from significant interference (my interpretation). I also refer both Parties to the Residential Tenancy Policy Guidelines #6 which refers to harassment. Harassment is defined as engaging in a course of vexatious comment or conduct that is known, or ought to be known to be unwelcome.

Having considered all the documentary evidence and verbal testimonies before me it is my decision that the male tenant has significantly disturbed another occupant by repeatedly

banging on the adjoining wall to their units, and making unwelcome and vexatious comments and conduct. I also find the male tenant has jeopardized the health and well being of another occupant through these continuous actions and by swearing and invading her privacy and right to quiet enjoyment and through his actions with other tenants residing at the building. As such the One Month Notice to End Tenancy is upheld and the landlords are entitled to an Order of Possession.

The landlord has requested an Order of Possession to take effect as soon as possible as the One Month Notice has an effective date of February 28, 2011 and the landlord seeks to end the tenancy on or before this date I find the landlords are entitled to an Order of Possession for the effective date of the Notice.

Conclusion

The Tenant's application is dismissed in its entirety. The One Month Notice to End Tenancy for Cause dated January 28, 2011 will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on **February 28, 2011**. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

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: February 22, 2011.

Residential Tenancy Branch