



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC, FF

Introduction

This hearing dealt with the tenants' application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared 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.

At the commencement of the hearing, I determined that the landlord had received all of the documents submitted by the tenants and I accepted the tenants' evidence package. However, I determined that the landlord had not served all of the landlord's evidence upon the tenants. I excluded the evidence not served upon the tenants and have not referred to those documents in making this decision.

As a preliminary issue, I determined that the tenants had not served a copy of the Notice to End Tenancy they were disputing upon the Residential Tenancy Branch or the landlord. I was able to confirm the content of the Notice with both parties and proceeded to hear this matter based on verbal testimony as to Notice to End Tenancy that was served upon the tenants.

On a procedural note, the teleconference call lasted 1 hour and 50 minutes before the call was automatically ended. At that time I determined that I had heard all relevant testimony from both parties. I subsequently received additional submissions from the witness/property manager; however, I did not accept those submissions as the property manager was provided the opportunity to provide verbal testimony with respect to issues I determine relevant, and because I cannot verify whether the submissions were served upon the tenants.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause issued May 31, 2011 be upheld or cancelled?

Background and Evidence

The tenancy commenced May 1, 2011 under a verbal tenancy agreement. The tenants are required to pay rent on the 1st day of every month. The rental unit is described as a garden apartment and there are two other living units at the residential property.

I heard that on May 31, 2011 the tenants were personally served with a 1 Month Notice to End Tenancy for Cause with an effective date of June 30, 2011 (the Notice). The reason for ending the tenancy, as indicated on the second page of the Notice, is 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”.

The landlord submitted that there were three main issues that caused the landlord to issue the Notice, being:

1. A complaint from another tenant about cigarette smoke penetrating another unit;
2. The tenants dog barking and howling; and,
3. Abusive and aggressive behaviour by the male tenant.

The landlord summarized the reason for ending the tenancy as several small issues that have piled up and characterized the relationship between the tenants of the three units as being like oil and water. The landlord's other tenants have been good, long term tenants and now those tenants are threatening to move out and call the police if there is another disturbance. The landlord expressed how she would be embarrassed by police presence at her property and has been embarrassed by the neighbour's experience with the tenants.

With respect to the three main issues identified by the landlord, the landlord testified that the smoking issue has largely been resolved since the complaint was communicated to the tenants. However, the dog's barking and howling continues to be an issue and Animal Control has become involved. As well, the male tenant's swearing and aggressive behaviour has resulted in the other tenants feeling fearful of the male tenant.

With respect to the male tenant's behaviour, the landlord submitted that the male tenant yells at the female tenant and uses profanity towards her. The landlord's witness, who is also the property manager, testified the tenants had been verbally informed that their

arguments were disturbing. The witness also pointed to an email of May 6, 2011 as evidence the tenants were made aware that their arguments were disturbing others.

In addition, I heard the male tenant was involved in confrontations with the next door neighbour and the neighbour's contractor which resulted in the tenant swearing and using his dog in an aggressive manner. This confrontation was witnessed by the other tenants of the residential property and resulted in an email from the neighbour dated May 25, 2011.

The tenants responded to the landlord's submissions as follows:

- The tenants rented this unit because smoking and pets were allowed;
- The dog is with the tenants almost all of the time and only on occasion has the dog been left alone after learning of its barking and howling;
- Animal Control has not contacted the tenants about the dog;
- The tenants had a few arguments but were unaware the arguments were disturbing other occupants until they were served with the Notice to End Tenancy; and,
- The tenants did not receive an email from the property manager on May 6, 2011.

With respect to the interactions with the neighbour and the neighbour's contractor the tenants submitted that the neighbour was having significant work done in the basement. The male tenant requested the foreman's phone number from the workers on the site in order to ascertain the scope of the work since the tenant works from home. A phone call to the foreman resulted in the foreman becoming angry and threatening with the tenants the foreman was concerned the tenant was going to call the City. Subsequently, the neighbour and foreman came to the rental unit and a confrontation ensued.

The male tenant questioned the veracity of the neighbour's email dated May 25, 2011. The tenant submitted that the neighbour spoke very little English yet the use of English in the email is very good. The neighbour, nor the neighbour's contractor, were called as witnesses.

Relevant documentary evidence considered in making this decision are copies of the tenants' written submission, emails submitted by the tenants, the landlord's written submission, the neighbour's email of May 25, 2011, and the email of May 18, 2011 from the tenant living upstairs and forwarded to the female tenant. Written statements of the other tenants have not been considered as they were not served upon the tenants.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to establish that the tenancy should end for the reason(s) indicated on the Notice. Upon consideration of all of the evidence before me, I make the following findings as to whether the landlord has met that burden.

I have considered the three reasons submitted by the landlord below:

Smoking

Since there is no written tenancy agreement between the parties, the only evidence of the terms of the tenancy agreement is verbal testimony. The tenants have stated that smoking was not prohibited when tenancy was formed. Where verbal terms are agreed upon there is no reason they cannot be enforced, unless the term violates section 6 of the Act. However, if verbal terms are in dispute the party trying to enforce a term has the burden of proof. In this case, the landlord has not proven, based on a balance of probabilities, that there was an agreement that the tenants would not smoke. Accordingly, I find the tenants are entitled to smoke in the rental unit.

Although the tenants are not prohibited from smoking in their unit, the other occupants are entitled to enjoy their units and if smoke is penetrating the other units and disturbing other occupants then the landlord should ensure transmission of smoke is minimized within the building.

I understand the smoking issue has been largely resolved; therefore, I do not find this reason sufficient to find the tenancy should end.

Dog barking and howling

In the tenants' written submission they acknowledge meeting with the landlord to discuss issues about smoke and the dog. Both of these issues had been raised in an email forwarded to the female tenant on May 18, 2011. The tenants responded to the May 18, 2011 email in an emailed response sent May 19, 2011. Therefore, I find that the tenants were first made aware that the dog was disturbing other occupants on May 18, 2011.

It was submitted to me that as a result of the meeting with the landlord, the tenants began notifying the other occupants of their intention to be away from home and gave them their phone number in case there were any issues with the dog. I understand that the dog was left alone for approximately two hours on one evening after the meeting

with the landlord and the tenants acknowledge that the dog may have been barking or howling during that time.

Other than the above described event, I do not find sufficient evidence that the dog has been left alone, howling and barking, for any significant period of time on a frequent or ongoing basis. Therefore, I do not find this reason sufficient for ending the tenancy.

Aggressive and abusive behaviour

It was alleged by the landlord that the arguments between the male and female tenant disturbed the other occupants. The tenants acknowledged a few arguments at the beginning of their tenancy but claimed they were unaware that their arguments disturbed the other occupants. I find the disputed verbal testimony insufficient to conclude the tenants were verbally informed that their arguments were disturbing other occupants. Upon review of the documentary evidence that was accepted and considered in making this decision, I am unable to find documentation that would show the tenants were notified or warned that their arguments disturbed others. Therefore, I accept the tenants' position that they were unaware that their conversations or arguments were heard or disturbing others until they were served with the Notice to End Tenancy.

Where a tenant's behaviour is so egregious that the tenant knew, or ought to have known, the behaviour was unreasonably disturbing, a tenant is not necessarily entitled to a warning or to be put on notice that their behaviour is disturbing. However, in less severe cases, it is reasonable to expect that a landlord communicate to the tenant that their behaviour is disturbing others so as to afford the tenant the opportunity to change or correct their behaviour. I find insufficient evidence that the tenants' behaviour was so egregious or significant that would warrant a Notice to End Tenancy without a prior warning. Therefore, I do not find sufficient cause to end the tenancy for the arguments between the male and female tenants.

The landlord is seeking to end the tenancy under section 47(1)(d)(i) of the Act which provides that a tenancy may end where the tenant have significantly interfered or unreasonably disturbed another occupant or the landlord of the residential property. I interpret the specific inclusion of the words "of the residential property" in section 47(1)(d)(i) to mean that disturbing a person residing on another property is not a basis to end the tenancy under this provision. However, I have considered whether the tenants' conduct towards the neighbour or the neighbour's contractor has disturbed the other occupants of the residential property since the other occupants allegedly overheard a disturbing confrontation.

During the hearing, the male tenant described a few interactions with the neighbour or the neighbour's contractor. I find there is indication that other occupants of the residential property were disturbed by a confrontation involving the male tenant as indicated in an email sent by the occupant/property manager to the neighbour on May 22, 2011. In that email, the occupant/property manager expresses "concern" about a conversation she overheard with the male tenant and there is an apology offered for his behaviour.

The male tenant acknowledged there was a confrontation in which he was involved in with the neighbour and explained that he was agitated by the neighbour coming up to the tenants' windows to engage in a confrontation with him. In the email allegedly written by the neighbour, the neighbour acknowledges that she and her husband went to pay a visit to the male tenant. In the neighbour's email, the neighbour describes how the tenant shouted profanities. The tenant acknowledged the neighbour was crying at times.

I find, on the balance of probabilities, that the tenant did shout profanities towards the neighbour on May 20, 2011. This conduct is inappropriate and disturbing. However, I do not find evidence that the landlord communicated or warned the tenant of this disturbing behaviour before issuing a Notice to End Tenancy.

Upon review of the various email communication between the parties, I find that upon notification of a problem, such as smoking and the dog, the tenants have responded to the landlord and taken steps to correct or change their actions. Unfortunately, I find the tenants were not afforded that same opportunity with respect to other occupants overhearing their arguments or interactions with the neighbour.

In light of the above, I find the landlord has issued a Notice to End Tenancy prematurely as the landlord has not communicated to the tenants that their conduct is disturbing other occupants. Therefore, I cancel the Notice to End Tenancy with the effect that this tenancy shall continue.

Although I have set aside the Notice, the tenants are now considered fully aware and cautioned that on-going or frequent disturbances of other occupants of the residential property, such as yelling, shouting and using profanity, may give the landlord cause to issue another Notice to End Tenancy in the future. While I appreciate the tenants cannot control the actions of others, the tenants are certainly in control of their own actions and it is imperative that they exercise appropriate control so as to not disturb other occupants of the residential property.

With respect to the filing fee, I find the conduct of both parties has contributed to this hearing and I order the parties to share in the cost of the filing fee. Since the tenants paid the filing fee, I order the landlord to pay the tenants \$25.00. The tenants are authorized to deduct \$25.00 from a subsequent month's rent in satisfaction of this award.

Conclusion

The Notice has been set aside and the tenancy continues. The tenants are cautioned that frequent or on-going disturbances may result in issuance of another Notice to End Tenancy in the future. The tenants are awarded one-half of the filing fee which they may recover by deducting \$25.00 from a future month's rent payment.

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: June 24, 2011.

Residential Tenancy Branch