



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC , OLC, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenants applied to set aside a Notice to End Tenancy for Cause; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and to recover the cost of filing this Application for Dispute Resolution.

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.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

The issues to be decided are whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside and whether the Landlord should the fee for filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 01, 2011, although the Tenants were permitted to occupy the rental unit prior to that date. The parties agree that in July of 2011 the male Tenant was an assistant manager at this residential complex and that the Landlord terminated that employment on August 02, 2011.

The Landlord and the Tenant agree that on July 19, 2011 the male Tenant had been asked to provide carpet cleaners with access to the residential complex; that the male Landlord telephoned the male Tenant on that date to tell them the cleaners had arrived and needed access; that the male Tenant was very upset regarding the tardiness of the cleaners; that the male Landlord had to yell and speak abruptly to the Tenant in an effort to calm him down; that during the telephone conversation the male Landlord spoke with the male Tenant in a manner that the male Tenant found offensive; and that shortly after this telephone conversation ended the male Tenant left a telephone message for the male Landlord in which the male Tenant threatened to slap or punch the Landlord in the mouth or face if the Landlord spoke inappropriately to him again.

The male Tenant stated that he was very upset after his telephone conversation with the male Landlord because he believed the Landlord was very rude and that the Landlord had terminated the conversation without saying good-bye. He stated that the comments were made in the heat of the moment and that he now understands the comments were inappropriate.

The Witness for the Landlord stated that he occasionally works for the Landlord; that he was present when the male Tenant told another occupant of the residential complex that he would punch the male Tenant in the mouth; and that he believes the male Tenant was upset because his employment had been terminated. The Landlord submitted a letter from this witness, which was dated August 02, 2011, in which the witness stated that the male Tenant stated that he would punch the male Landlord if the male Landlord stated the Tenant was not doing a good job.

The male Landlord stated that the Witness for the Landlord told him about the conversation of August 02, 2011, at which point the Landlord decided that the tenancy should end.

The male tenant denies threatening to hit the Landlord in the presence of the Witness for the Landlord.

The Landlord and the Tenant agree that a One Month Notice to End Tenancy for Cause was personally served to the male Tenant on August 03, 2011, which declared that the Tenant must vacate the rental unit by September 30, 2011. The reasons stated for the Notice to End Tenancy were that 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 and 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.

The Landlord and the Tenant agree that the parties continued to work together after the incident on July 19, 2011; that the Landlord left a pet with the Tenant after the incident on July 19, 2011; that the male Tenant made no threats directly to the Landlord after the incident on July 19, 2011; and that the male Tenant has never acted on his threat to hit the Landlord.

The male Landlord stated that he is not afraid of the male Tenant but he does not believe that the Tenant should be permitted to threaten him, either directly or indirectly.

The Landlord and the Tenant agree that the Tenants signed an addendum to the tenancy agreement, in which they agreed that they will not engage in illegal activity, including an assault or a threatened assault; that engaging in illegal activity is in violation of section 47(1)(e) of the *Act*; and that engaging in illegal activity is a breach of a material term of the tenancy agreement. The Landlord believes the comments made by the Tenant are a violation of section 47(1)(e) of the *Act* and that they are a breach of a material term of the tenancy agreement, both of which are grounds to end a tenancy.

Analysis

On the basis of the undisputed evidence presented at the hearing I find that the male Tenant left a telephone message for the male Landlord on June 19, 2011, in which the Tenant told the Landlord he would punch or slap him if he ever spoke in an inappropriate manner to him again.

I find that on August 02, 2011 the male Tenant told a third party that he would punch the Landlord if the Landlord spoke negatively about his work performance. In reaching this conclusion I favoured the testimony of the Witness for the Landlord, who testified that he was present during this conversation, over the testimony of the male Tenant, who denied making the comment.

I favoured the testimony of the Witness for the Landlord over the testimony of the Tenant, in part, because the Witness is an independent party who has no direct connection to this dispute, albeit he works for the Landlord on occasion. Conversely, I find the testimony of the Tenant to be self-serving, given he is facing the possibility of his tenancy ending.

I favoured the testimony of the Witness for the Landlord over the testimony of the Tenant, in part, because the Witness told the Landlord about the conversation shortly after the conversation occurred, which lends credibility to the testimony of the Witness.

I favoured the testimony of the Witness for the Landlord over the testimony of the Tenant, in part, because I find that it is quite likely that the male Tenant would have made these comments, given that he had just received notice that his employment was ending and given his previous history of uttering inappropriate comments when he is upset.

Section 47(1)(d)(ii) of the *Act* permits a landlord to end a tenancy if 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. I find that the Landlord has not established grounds to end this tenancy pursuant to section 47(1)(d)(ii) of the *Act*.

While I accept that the male Tenant threatened to hit the male Landlord in his telephone message on July 19, 2011 and that he told another occupant of the residential complex that he would hit the male Landlord if he made negative comments regarding his work performance, I find that the male Tenant has made no attempt to act on those threats, even though the parties see each other on a reasonably regular basis. I therefore cannot conclude that the comments have seriously jeopardized the health, safety, or lawful interest of the Landlord.

Section 47(1)(d)(i) of the *Act* permits a landlord to end a tenancy if the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

I find that the comments made by the male Tenant on July 19, 2011 and August 02, 2011 are not sufficient grounds to end this tenancy pursuant to section 47(1)(d)(i) of the *Act*. While I agree that the comments are inappropriate, I find that they do not constitute a significant interference or an unreasonable disturbance.

In determining that the comments do not constitute a significant interference or an unreasonable disturbance, I was influenced by the fact that the Tenant has never attempted to harm the Landlord in spite of their continued interaction; that the phone message was left after a “heated” telephone conversation in which both parties contributed to the conflict; that the Landlord did not consider the telephone message alone was grounds to end the tenancy or the Tenant’s employment; and that the comments made on August 02, 2011 were not made directly to the Landlord and were not intended to be relayed to the Landlord.

In these particular circumstances, I find that it is highly unlikely that the comments made by the male Tenant constitute a criminal offence. Under the Criminal Code, it is an offence to knowingly utter or convey a threat to cause death or bodily harm to any person. For comments such as these to be considered a criminal act the person making the threat must intend that they be taken seriously and must be made for the purposes of intimidating or striking fear into the other party. The statute is not meant, in my view, to criminalize “idle threats” or words blurted out only in anger, desperation, bitterness or frustration. In my view the words uttered by the male Tenant were made in anger and were not intended to intimidate the Landlord.

Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that there are grounds to end this tenancy pursuant to sections 47(2)(d)(i) or 47(2)(d)(ii) of the *Act*, I hereby set aside the One Month Notice to End Tenancy for Cause and I order that this tenancy continue until it is ended in accordance with the *Act*.

As I find the Tenant's application has merit, I hereby authorize the Tenant to deduct \$50.00 from his next rent payment, as compensation for the filing fee paid for this Application for Dispute Resolution.

Both parties are advised that this decision does not prevent the Landlord from attempting to end this tenancy pursuant to section 47 of the *Act* in the event that the Tenant continues to make inappropriate comments to the Landlord in a manner that constitutes a significant interference or an unreasonable disturbance.

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: September 09, 2011.

Residential Tenancy Branch