



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, ERP, RP, PSF

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for an order permitting the tenant more time to make an application to cancel a notice to end tenancy; for an order cancelling a notice to end tenancy for cause; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property and for an order that the landlord provide services or facilities required by law.

An agent for the landlord company and the tenant attended the hearing, gave affirmed testimony and provided evidence in advance of the hearing.

During the course of the hearing, I found that the tenant's application claims a number of issues that are not relative to the notice to end tenancy, and I ordered that those issues be severed from this application and will be heard at a different date and time. The parties will receive a notice from the Residential Tenancy Branch setting out the date and time of the hearing with respect to those matters. The only issues to be decided in this hearing will be the tenant's application for more time to apply to set aside the notice to end tenancy and the application for an order cancelling a notice to end tenancy for cause.

All evidence and the testimony of the parties have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order allowing the tenant more time to make an application to cancel a notice to end tenancy?

Is the tenant entitled to an order cancelling a notice to end tenancy for cause?

Background and Evidence

The tenant testified that the tenant suffers from post-traumatic stress disorder and fibromyalgia and required assistance to complete the Tenant's Application for Dispute Resolution, and was not able to receive that assistance until after the time permitted under the *Act*. The landlord testified that the tenant has medical issues, and the landlord is not opposed to the tenant being permitted more time to make an application for an order cancelling a notice to end tenancy than the *Residential Tenancy Act* allows.

This month-to-month tenancy began on June 1, 2009 and the tenant still resides in the rental unit. Rent in the amount of \$568.00 per month is currently payable in advance on the 1st day of each month and there are no rental arrears. On May 25, 2009 the landlord collected a security deposit from the tenant in the amount of \$275.00. The landlord company is a property management company that manages the rental unit for the owner. The rental unit is an apartment type of condominium and the building is managed by a strata council. A written tenancy agreement exists between the landlord company and the tenant, and strata by-laws also apply. Copies of those documents were provided in advance of the hearing.

The landlord's agent testified that the strata council sent a letter to the owner of the condominium stating that the tenant had caused disturbances within the complex, asked that the landlord evict the tenant due to those disturbances and imposed a fine against the owner. A copy of the letter from the strata council was provided in advance of the hearing. The landlord's agent further stated that the RCMP was called to the rental unit to deal with domestic disturbances such as screaming, yelling, and threatening other residents of the complex. The landlord's agent was not present at that time and testified that the landlord was not provided with copies of any police reports. A previous incident had occurred that the landlord's agent was aware of and met police on site to secure the rental unit, however that incident was dealt with at a hearing before a Dispute Resolution Officer and is not relative to this application. The landlord's agent is not personally aware of any of the facts related to the notice to end tenancy and had no witnesses to call that could attest to the disturbances.

On August 23, 2011 the tenant was served with a 1 Month Notice to End Tenancy for Cause, a copy of which was provided prior to this hearing. The notice is dated August 23, 2011 and contains an effective date of vacancy of September 30, 2011. The notice states that:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord

- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant has engaged in illegal activity that has, or is likely to:
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The letter from the strata council to the owner states that there have been repeated occurrences of excessive noise including yelling, screaming, stomping as well as spitting and throwing lit cigarette butts from the balcony and that the most recent incident was on August 18, 2011. The letter also asks that the owner end the tenancy as soon as possible and possibly negotiate their departure for the end of August, 2011. The landlord's agent was unable to attest to any of the incidents set out in the letter.

The tenant testified that the only incident was caused by the tenant's brother who is also a tenant in the building. The strata council chose to enforce the by-law on this rental unit because that is where the tenant's brother was creating the disturbance.

The tenant also testified that the tenancy agreement and the by-laws both state that the parties are to discuss problems that arise. No one has spoken or attempted to speak to the tenant about any problems, disagreements or occurrences. The tenancy agreement states:

“Resolution of Disputes – If problems or disagreements arise, the landlord and tenant should try to talk to each other or find a solution. If they still cannot agree, either may contact the Residential Tenancy Branch for clarification of their rights and responsibilities or an intervention. If no agreement is reached, a landlord or a tenant may apply for a dispute resolution to get a decision. Many, but not all, kinds of disagreements can be decided by dispute resolution.”

The Strata By-law states:

“1.8.1 Complaint, Right to Answer and Notice of Decision:

“(a) The strata council must not impose a fine for a contravention of a by-law or rule unless the strata corporation has received a complaint about the contravention and has given the owner or tenant the particulars of the complaint in writing, and a reasonable opportunity to answer the complaint including a hearing if requested by the owner or tenant.

- (b) If the person is a tenant, the strata corporation must give notice of the complaint to the person's landlord and to the owner.
- (c) The strata corporation must promptly give notice in writing of a decision to the tenant or owner.
- (d) Once the requirements referred to in this section have been complied with, the strata council may impose a fine for a continuing contravention of that by-law or rule without further compliance with this section
- (e) All complaints to the strata corporation and the council shall be in writing and signed by the owner.

The tenant asks for an order cancelling the notice to end tenancy.

Analysis

Because the landlord has not opposed the application permitting the tenant more time to apply to cancel the notice to end tenancy, I find that it is just in the circumstances to permit the tenant more time, and I so order.

I have read the tenancy agreement and the strata by-laws, and agree with the tenant that parties are expected to discuss incidents and attempt to find a resolution to disputes. I further find that the strata corporation has not complied with the by-law 1.8.1(a). The evidence before me is that the tenant was not given any notice other than the notice to end the tenancy, and the tenant was not given any opportunity at all to answer the complaint or request a hearing.

Further, I find that the landlord has failed to show sufficient cause to issue a notice to end tenancy. There is no evidence before me who may have been disturbed, other than a copy of the letter of the strata corporation stating that neighbouring units have reported disturbances. No witnesses have testified to those disturbances, other than the tenant's testimony that the tenant's brother, also a tenant in the building, caused a disturbance in this tenant's rental unit. Had the strata corporation complied with By-law 1.8.1(a), the strata corporation may have had a different view of the contravention.

Conclusion

For the reasons set out above, the tenant's application for an order permitting the tenant more time to make an application to cancel a notice to end tenancy is hereby allowed.

I further order that the notice to end the tenancy issued on August 23, 2011 is hereby cancelled.

The remaining relief sought by the tenant in the Tenant's Application for Dispute Resolution is hereby adjourned. The parties are urged to discuss those matters and attempt to resolve the issues. If the issues can be resolved, the tenant is advised to contact the Residential Tenancy Branch to advise that a hearing is not required. If any of the issues cannot be resolved, the parties must appear at a new hearing, conducted by way of conference call, on a date and time that will be provided to both parties by the Residential Tenancy Branch.

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: October 04, 2011.

Residential Tenancy Branch