



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, RP, CNC, OPC, FF

Introduction

This hearing dealt with applications by the tenants for an order setting aside notices to end this tenancy and an order compelling the landlord to perform repairs and a cross-application by the landlord for an order of possession. Both parties were represented at the conference call hearing.

At the hearing the tenants advised that they wished to withdraw their claim for an order compelling the landlord to perform repairs. The hearing proceeded to address the merits of the notices served by the landlord.

Issue to be Decided

Should the notices to end tenancy be set aside?

Background and Evidence

The tenants have resided in the rental unit for approximately 5 years. Rent is currently set at \$600.00 per month. The parties agreed that on or about October 2, the tenants were served with a 10 day notice to end tenancy for unpaid rent (the "Rent Notice"). The landlord's agent, B.T. testified that the tenants failed to pay rent for the month of October until well after the 5 day period in which to pay rent and cancel the Rent Notice had expired. The tenants testified that their rent was paid by the Ministry of Employment and Income Assistance and was sent directly to the landlord at the end of September. They claimed that at the end of September, B.T. handed them the cheque and told them they would have to move. The tenants' advocate testified that on September 27, she telephoned and sent a letter to B.T. at the address for service listed on the Rent Notice advising him that if he wanted to end the tenancy, he was required to use the forms prescribed by law. B.T. denied having had this conversation with the advocate. The advocate further testified that on September 29 she sent a second letter enclosing the cheque which B.T. had returned to the tenants. B.T. denied having received the letter or cheque.

The landlord's agent B.L. claimed that he served a one month notice to end tenancy for cause (the "Cause Notice") on the tenants on August 5 by posting it on the door to the rental unit. The tenants testified that they did not receive the Cause Notice until they received it together with the landlord's application for dispute resolution on October 14. The tenants filed an application to dispute the Cause Notice on October 17.

The Cause Notice alleges the following:

- there are an unreasonable number of occupants in a rental unit;
- the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property; and
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The landlord presented a number of witnesses. M.W. testified that she has lived in the residential property for 3-4 years and that during her residency, she has continually been bothered by the tenants screaming, fighting and smoking marijuana in front of the building. She stated that the tenants frequently ask her for cigarettes or cigarette paper and that they frequently invite drunken guests to the building, one of whom fell asleep in the elevator. She stated that there have been many police interventions with the tenants and their guests. The tenants argued that M.W. could not have a view of the entryway

from her apartment to which she responded that she can see the front of the building from her balcony and that she observes the tenants and their guests when she is retrieving her mail.

The landlord's witness S.H. testified that he has lived in the residential property for approximately 2 ½ years and that for the past 3 months, has been disturbed at least once each week by the presence of emergency vehicles attending to issues in the rental unit. He stated that in one week, emergency vehicles were present every day. When asked how he knew which unit the emergency attendants had come in response to, S.H. testified that each time he went to speak with the attendants and was told that the rental unit was their focus.

The landlord's witness M.O. testified that she has live in the residential property throughout the tenants' tenancy and that during that time, she has repeatedly observed what she called "violent ranting" and has overheard threats and violent talk from the tenants and their guests.

B.T. began working for the landlord as a building manager several years after the tenancy began and estimated that since his employment began, he has received up to 150 letters of complaint about the tenants. He stated that the rental unit is full of people whenever he attends and alleged that the male tenant had jumped on him. He further testified that the tenants or their guests have smashed windows and broken the front door.

The tenants denied that they or their guests had caused any kind of disturbance and denied having caused damage. They claimed that the notices to end tenancy were served as part of a retaliatory action because the tenants had reported repair issues to the city. The tenants testified that when they paid rent in September, B.T. wrote on the receipt, "Last month or call me. I want to know why u trying to make trouble." [sic] B.T. denied having written this on the receipt.

The tenants stated that they have been living in the rental unit for many years without incident and had never received warnings from the landlord.

Analysis

First addressing the Rent Notice, I find the tenants' version of events to be more believable. B.T. did not dispute that rent was regularly paid via a cheque sent directly to him by the Ministry and I find it more likely than not that he refused to accept the cheque he received at the end of September. There would have been no reason for the tenants' advocate to write him letters if he had not in some way given the tenants an

indication that he did not accept the cheque. I find that the tenants had offered legal tender prior to the time that the Rent Notice was issued and I find that the landlord did not have the right to refuse to accept the rent. Accordingly I order that the Rent Notice be set aside and of no force or effect.

I accept that the landlord attempted to serve the tenants with the Cause Notice on August 5 by posting it to the door of the rental unit, but I am not persuaded that the tenants received it at that time. While posting documents is an acceptable means of service under the Act, it is also fraught with difficulty as it is easy for documents to become dislodged from a door or for a third party to remove them. Find that the tenants received the Cause Notice on October 14 and that they filed their dispute of the notice within 10 days.

I did not find B.T. to be credible. I did not accept his testimony with respect to whether the tenants had paid rent and I was under the impression that he exaggerated the circumstances in order to bolster his case. However, I found the landlord's witnesses to be credible. Some of M.W.'s testimony was hearsay evidence and I have given that evidence little weight, but I found her believable in recounting what she had seen and experienced. I found S.H. and M.O. to be particularly credible. Their evidence was given in a forthright fashion and without any apparent malice.

Although the tenants denied all the allegations made against them, I find it more likely than not that they and their guests have unreasonably disturbed other occupants of the residential property. While they may have lived for several years without having been warned about poor behaviour, I find that this more likely suggests that the landlord was not vigilant in following up complaints. I accept that emergency vehicles are continually present at the residential property in response to calls from and about the rental unit. While some emergency intervention may be required on occasion, their continued presence suggests that there are significant problems with the tenants and their guests.

I find that the landlord has proven on the balance of probabilities that the tenants and their guests have unreasonably disturbed other occupants of the residential property and accordingly I decline to set aside the Cause Notice. The tenants' application is dismissed.

I grant the landlord an order of possession effective November 30, 2011. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession. As the landlord has been successful in its claim, I find it should recover the \$50.00 filing fee paid to bring the application. The landlord may deduct \$50.00 from the security deposit.

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 03, 2011

Residential Tenancy Branch