



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, DRI

Introduction

This hearing dealt with two applications, both by the tenant for an order to set aside a notice to end tenancy, to dispute a rent increase and to allow him three parking stalls. Both parties attended the hearing and had opportunity to be heard.

This hearing was originally scheduled to be heard on February 23, 2012. Due to an issue with receipt of evidence, the hearing was adjourned to be heard on March 22, 2012. On March 22, both parties called into the hearing but due to technical difficulties, the hearing did not take place. The Dispute Resolution Officer dismissed the applications with leave to reapply. On March 23, 2012 the Residential Tenancy Branch contacted both parties and informed them that the hearing would be rescheduled. The landlord contacted the Residential Tenancy Branch to request an expedited date and therefore the hearing was scheduled for March 29, 2012.

At the start of the hearing, the tenant requested an adjournment as his advocate was unable to attend and he did not have sufficient time to prepare. The landlord objected to the adjournment. I found that the prejudice to the landlord in the event of an adjournment would be greater than that to the tenant if the hearing proceeded. Accordingly the hearing proceeded as scheduled on March 29, 2012.

The landlord had two witnesses. The hearing went on for an extended period of time and one of the witnesses did not get an opportunity to testify. Therefore the hearing was adjourned to continue on this date (April 04, 2012).

At the start of the hearing, the tenant agreed that the rent increase was no longer an issue and therefore this portion of his application was dismissed.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to the use of three parking spaces?

Background and Evidence

The tenancy began approximately 30 years ago. The current monthly rent is \$842.74. Neither party filed a tenancy agreement into evidence.

The building is approximately 40 years old and houses 22 units. There are 20 parking stalls for the use of the occupants of the building.

The tenant stated that right from the start of tenancy, he was allowed the use of three parking spots. The landlord testified that about two years ago, when the number of occupants with vehicles increased, problems arose with parking space. The landlord decided to assign one parking spot per unit. The tenant argued that he was entitled to three spots because it was part of his tenancy agreement. The landlord denied this.

The resident manager stated that she had received numerous complaints from some of the occupants of the building regarding the offensive behavior of the tenant. The landlord filed some written complaints into evidence. All of these letters are dated later than February 01, 2012 (the date of the notice to end tenancy).

The complaints include allegations of the tenant disturbing residents by knocking on their doors, striking up conversations with residents to complain about the manager, smoking in the hallways and walking in public areas wearing a bathrobe. Some complainants stated that they did not feel safe in the laundry room or the common areas for fear of being accosted by the tenant.

The manager also testified that she had not received any written complaints and was informed of the need to document events and complaints in June of 2011. On June 08, the manager wrote a warning letter to the tenant about the above behaviors. The next letter was written to the tenant on January 28, 2012. This letter referred in general to complaints made by other residents regarding the offensive behavior of the tenant. The letter did not specify any date/time of any incident.

The landlord also sent letters to the tenant after June 08, 2011 which dealt with the parking spot and storage of unlicensed vehicles. These letters did not mention other issues as described above.

On February 01, 2012, the landlord served the tenant with a one month notice to end tenancy for cause.

The notice to end tenancy alleges that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant and has seriously jeopardized the health or safety or lawful right of another occupant or landlord.

The first witness for the landlord testified that approximately a year ago the tenant knocked on his door and spoke in a negative manner against the resident manager.

In addition, the witness testified that the tenant wears a bathrobe in public areas and has made some rude racial comments. The witness stated that his wife is afraid to go to the laundry room on her own, for fear of meeting the tenant. The witness agreed that this behavior stopped when he told the tenant to refrain from knocking on his door.

The second witness stated that she does not live in the complex but visits regularly to care for her father who is a resident. She testified that the tenant started speaking to her while she was retrieving the mail. The tenant spoke ill of the manager.

The tenant agreed that he did walk around in public areas wearing his bathrobe, but has since stopped. He also stated that he does not knock on peoples' doors anymore and agreed that he complained to other residents about the manner in which the resident manager was doing her job.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the tenant stated that he was entitled to three parking stalls while the landlord stated that he was allowed the use of one stall only. The tenant did not have any written agreement to support his version. Based on a balance of probabilities and the fact that there are only 20 parking stalls for 22 units, I find that it is more likely than not that the tenant is entitled to the use of one stall only.

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant and has seriously jeopardized the health or safety or lawful right of another occupant or landlord.

Based on all the evidence before me, I find that the tenant received a warning letter on June 08, 2011 about his offensive behaviour. After that, the tenant did receive several letters from the manager, but none of them made reference to the reason for the first letter. The next letter dated January 28, 2012 was served to the tenant just prior to the notice to end tenancy. This letter did not reference any specific incidents of offensive behaviour.

While the manager stated that she had received several verbal complaints, through the tenancy, the only written complaints are dated after the notice to end tenancy was served on the tenant. By her own admission, she was advised in June of 2011 that it was important to document events but despite this knowledge, she did not have any written documentation to support the notice to end tenancy at the time she served it on the tenant.

I also take into consideration that this tenancy is approximately 30 years old and a letter dated June 08, 2011 was the first time the tenant was given a warning about his behaviour. It is also the first time in 30 years that the tenant was served a notice to end tenancy.

I accept that the tenant behaved in an offensive manner, but I am not satisfied that the actions of the tenant justify bringing this tenancy to an end. Since there is no history of such behaviour on the part of the tenant, during the 30 year tenancy, it appears that it is possible that these incidents were isolated and not an ongoing pattern of behaviour for this tenant.

I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy dated February 01, 2012. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from giving other occupants of the residential complex, reason to complain. I find it timely to put the tenant on notice that, if such behaviours were to occur again in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer, for consideration.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

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: April 04, 2012.

Residential Tenancy Branch