



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened in response to an application filed by the tenant who is seeking to cancel a Notice to End Tenancy given for cause and seeking to recover the filing fee paid for this application.

All parties attended the hearing and gave evidence under oath.

Issue(s) to be Decided

Have the landlords met the burden of Do the landlords have cause to end this tenancy?

Background and Evidence

This tenancy began on January 15, 2008. On May 23, 2012 the landlords served a 1 month Notice to End Tenancy effective June 30, 2012 under Section 47(1) of the *Residential Tenancy Act*:

- (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk;

On the same date the landlords served a Notice of Rent Increase effective September 1, 2012 increasing the rent from \$928.80 to \$968.74

The landlords say that the tenant swears at neighbours and other tenants in the rental unit. That he swears at the children of other tenants and that on three occasions since February 2012 he has shut the power off to the entire house. The landlords say that as

a result of the tenant's conduct they have lost other tenants. In support of their Notice to End Tenancy for cause, the landlords have tendered 4 letters attesting to the tenant's conduct. Two letters are from the landlords themselves, one letter is from the witness who is a family member and a fourth letter from a former tenant, MS, who states that she had to move because the tenant would swear at her children. In this letter the tenant MS states that on several occasions the tenant told her to "...shut your f...ing dog up you stupid b..ch" and that the tenant knocked on her door and yelled at her 8 year old daughter to "...tell your mother I want some f...ing hot water, I pay my f...ing rent here too".

MS states that on one occasion "...every breaker in the house went out (except the living room) I asked my boyfriend to ask [the tenant] to switch the breakers back on, when he did so [the tenant] replied that maybe if your kids weren't making so much noise going down the stairs, they wouldn't have went out" and then he refused to turn them back on and demanded we call the landlord". MS stated that "Clearly [the tenant] turned my power out...".

MS states that her children would no longer play in the yard as they were afraid of the tenant. MS states that she decided to move and did not give 30 days' written notice for "...my own personal health reasons, and my childrens well being...".

The witness VS testified that the tenant shut the power off to the rental unit 3 times since he hired a crane service to remove a hot tub from the rental property. The landlord testified that the crane operator advised that the best location for him to situate the crane in order to remove the hot tub was a spot on the street where the tenant had parked his vehicle. The landlord asked the tenant to remove his vehicle and the tenant refused. The crane operator was forced to situate his crane on the rental property lawn in order to remove the tub and in so doing damaged the lawn. In her letter MS also speaks of the crane incident stating that her children were screaming for her to call the police because the tenant was going to "...hurt Jeff". The landlord says MS did not attend the hearing to give her testimony under oath because she is afraid of the tenant.

VS testified to another incident in 2010 when he arrived on the rental property with an insurance adjuster and that the tenant told them to "f-off and move your f...ing truck now it is in my way" even though VC states that the adjuster's car was not blocking the tenant.

The tenant testified that he has lived in this rental unit since 2008 and if he were such an awful tenant he wonders why the landlord has never tried to evict him previously. Further that if he was swearing at children and frightening people why the police have

not been called. The tenant testified that the allegations of the landlords are not true. The tenant specifically denies shutting off the power to the house or to swearing at other tenants. The tenant testified that he was eating his dinner when the landlord arrived and asked him to remove his car from where it was parked on the public street. The tenant notes that the landlord has no right to ask him to remove his vehicle as it was not parked on the rental property. The tenant testified that he had no prior notice that the crane would be arriving and that his car would have to be moved. The tenant submitted that if there was damage to the lawn as a result of where the crane had to be located the tenant is unaware of that damage and noted there is no evidence from the crane operator as to the damage or extra costs that might have been incurred by the landlord in this regard.

Analysis

The testimony of the tenant and the landlords is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find this to be the case here. I can give little weight to the statements provided because three of the statements are provided by the landlord and/or their agents and the fourth statement is provided by a party who did not attend the hearing to be questioned as to her version of events. Further, the statement is not sworn. However, even if I were to accept the landlords' version of events as being entirely true I would find that while the tenant's conduct is annoying, rude and not likely to result in a cordial landlord/tenant relationship it does not show that the tenant has:

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk;

Conclusion

The tenant's application is allowed. The notice to End Tenancy for Cause is set aside and this tenancy shall continue as though no such notice had been served. The tenant is at liberty to deduct \$50.00 from his next rental payment to realize recovery of the fee he paid for this application.

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 19, 2012.

Residential Tenancy Branch