



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 by way of conference call in response to the tenants' application to cancel a One month Notice to End Tenancy and to recover the filing fee from the landlord for the cost of this application.

One of the tenants and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing and the landlord only provided documentary evidence to the Residential Tenancy Branch.

Issue(s) to be Decided

Are the tenants entitled to have the One Month Notice to End Tenancy cancelled?

Background and Evidence

The parties agree that this tenancy started on August 15, 2011. Rent for this basement unit is \$900.00 per month and is due on the first day of each month.

The landlord testifies that the tenants' were served a One Month Notice to End Tenancy on June 28, 2012 in person. This notice has an effective date of July 31, 2012 and gives the following reason to end the tenancy:

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.*

The landlord testifies that there have been incidents where the tenant's daughter has climbed the fruit trees in the yard and caused damage to the trees. The landlord agrees that the upper tenants' two children also climb the trees but the damage was caused by this tenant's daughter.

The landlord testifies that the upper tenants had a swimming pool in the backyard. This tenant's daughter and some friends filled the pool with mud and grass leaving at least two inches of mud in the bottom of the pool. This mud and grass caused extensive damage to the pump on the pool.

The landlord testifies that there have been incidents with the two sets of tenants fighting about their dogs' rights to use the back yard. The landlord testifies that the back yard is a common area but the upper tenants maintain the yard. It had been agreed that as all the dogs owned by the upper and lower tenants are vicious that the lower tenants would ask the upper tenants to put their dogs in when the lower tenants wanted to use the yard for their dogs. The landlord testifies that this tenant would not establish a routine and the two women became verbally abusive towards each other. It was then arranged that the two sets of tenants would send a text message when the lower tenants wanted to put their dogs out but again the lower tenants would not do this.

The landlord testifies that the gate to the yard is propped closed with tires to prevent the upper tenants dogs escaping. The landlord submits that the lower tenants' deliberately opened the gate to allow the upper tenants dogs to escape and then they called the bylaw officer to remove the upper tenants' dogs. The upper tenants were not at home at the time and when they arrived home a fight between the female upper tenant and this tenant erupted. The landlord testifies that he did not know what to do and spoke to both sets of tenants. The landlord states he did mention to this tenant that he may evict the upper tenants however on reflection the landlord states he decided that the upper tenants have lived upstairs for six years and maintain the property and yard. The landlord testifies that when he was told by a neighbour that they saw the lower tenants at the side of the house where the gate is the landlord came to the conclusion that the lower tenants must have opened the gate to let the dogs out in retaliation to the upper tenants and then called the bi-law officer so the landlord decided he would evict the lower tenants..

The landlord testifies that he was told by the upper tenants that the lower tenant's boyfriend had threatened the upper male tenant but nothing can be proven concerning that.

The landlord testifies that four months ago the tenant's daughter knocked over the upper tenant's scooter causing \$1,500.00 worth of damage. It is due to that incident and the other incidents with the trees and the pool that the upper tenants do not want the lower tenants daughter in the yard unsupervised.

The landlord testifies that after he gave the lower tenants the eviction notice the upper tenants' father came to the unit and found some pamphlets burned at the upper tenants' front door and by a dry bush. There was also a magazine with a message written on it to the sons of the upper tenants. The landlord testifies that the pamphlets that were burned were from the lower tenant's daughter's bible class which she attends. The

landlord testifies that the upper tenants are extremely concerned about their safety and the landlord is concerned for all the tenants' welfare and the safety of the property. The landlord testifies that when he attended the property at 2.00 p.m. on the day of the fire the lower tenant's daughter was coming out of their unit. The landlord testifies that the police were called to the property because of the fire but as there was insufficient evidence as to who attempted to start the fire no charges could be laid. The landlord provided the police file number.

The landlord testifies that the lower tenants unit has had a recent flood from the sewer backing up. The landlord testifies that he is a plumber so he put his snake down the pipe and the blockage broke the snake. The landlord found the pipe to be blocked with a large clump of hair, a plastic bag and with small towels. The basement unit has now been rendered unliveable as the kitchen and dry wall has had to be removed by the restoration company.

The landlord testifies that there have been issues with dog faeces in the neighbourhood and the landlord has been told by some neighbours that the tenants in the lower suite have been seen walking their dog but not picking up after their dog. The landlord testifies that neighbours have picked up dog feces and deposited it on the front lawn of the property with a message saying "pick up your own dog shit".

The tenant disputes the landlord's claims. The tenant testifies that they rented the basement unit a year ago but she does not get along with the female tenant upstairs. The tenant states they rented the unit because they needed outdoor space for their dog but the upper tenants' dogs use the back yard all the time preventing the lower tenant's dog's access to the area. The tenant testifies that the upper tenants would dictate the time they could use the yard and they tried asking and texting the upper tenants but were told they were too busy or the upper tenants did not respond to texts messages.

The tenant testifies that she was walking her dog up the street on June 23, 2012 when the upper tenants' dogs came out of some bushes and attacked the tenant's dog. The tenant testifies that she spoke to the upper tenant about this and the upper tenants' father came and put a tire on the gate because the latch was broken. The tenant testifies that two days later the upper tenants' dogs got out again and were barking and growling so the tenant called the bylaw officer. The tenant states the bylaw officer could not contain the upper tenants' dogs on their deck and one of the dogs is considered to be vicious. After the bylaw officer left, the upper tenants came home and threatened the tenant's boyfriend. The female tenant then came down and viciously attacked the female lower tenant. The tenant testifies that the police were called and no charges were laid as the two sets of tenants live in the same dwelling. They each agreed to stay away from the other.

The tenant testifies that her daughter has disabilities and agrees she was playing with two friends by the upper tenants' pool and agrees they put mud in the pool. The tenant states this incident happened last year and they apologised to the upper tenants and then heard nothing else about any further damage. The tenant testifies that in regard to the damage to the trees. Her daughter and the upper tenants' sons all play in the trees and any damage to the trees is caused by all the children and not just her daughter.

The tenant disputes that her daughter set fire to pamphlets at the upper tenants' door. The tenant testifies that her daughter was at bible camp that day and there was no one at home. The tenant testifies she received a phone call from her daughter at about 2.00 p.m. to inform her that her daughter was home safely and her daughter then left the unit to meet the tenant as she got off the bus. The tenant states this is when the landlord would have seen her daughter. The tenant testifies that she knew nothing of the incident until the police came and informed her of the incident and stated it occurred sometime between 8.00 a.m. and 2.00 p.m. The tenant testifies that anyone could have obtained the bible pamphlets as they are sent to the tenants address from the bible camp and left in the tenants' joint mail box.

The tenant testifies that since these incidents they found shavings in their hubcaps and the bolts on one of the back tires on their vehicle have been loosened which resulted in the tenant's tire nearly falling off on the highway. The tenant testifies that they called the police but they have no evidence to show that the upper tenants were responsible.

The tenant cross examines the landlord and asks the landlord why he told her that he was going to evict the upper tenants due to the damage their dogs have done to the property. The landlord replies that he did not know which set of tenants to evict but after finding out that the tenants in the lower unit let the upper unit tenants' dogs out and called the bylaw officer this instigated the fight between the tenants so he decided to evict the lower tenants.

The landlord declines to cross examine the tenant. The landlord orally requests an Order of Possession.

The tenant has provided photographic evidence showing marks on her face, neck and foot after the incident with the upper tenant, photographs showing mice droppings and a dead mouse, damage caused by the upper tenants dogs to the property and photographs of vehicles blocking the tenants truck on the driveway.

Analysis

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I refuse to accept the landlords documentary evidence sent to this office as in accordance with the rules of procedure 11.5 the landlord provided the evidence late to this office and failed to comply with the *Act* and the rules of procedure in ensuring the tenant also received the evidence prior to this hearing. The evidence provided is in my opinion of little value as it has been written by the upper tenants who are closely associated with the animosity clearly in place between the tenants and the letter provided by those tenants is not a sworn affidavit of events and the landlord has not called these other tenants to act as witnesses for the landlord in this hearing to submit to cross examination.

I find that the majority of the landlord's verbal testimony is information from a third party and is therefore deemed to be hearsay and with the exception of the damage to the other tenants' pool and the fruit trees the tenant has contradicted the landlord's testimony on all counts. These incidents between the tenants have creating animosity and conflict between the tenants from which I deduce that both sets of tenants hold equal reasonability.

The landlord has not shown that the tenant's daughter is solely responsible for the damage to the fruit trees and the incident with the upper tenants' pool and scooter is a conflict between the tenants as the pool and scooter is not the landlord's property and any damage is therefore not covered under the *Act*. The landlord has not met the burden of proof that the lower tenants opened the gate to let the upper tenants dogs out or that the lower tenants were responsible for the resulting altercation. The landlord has not met the burden of proof that the lower tenants daughter attempted to start a fire or that the lower tenants are responsible for the flood in their unit or the dog feces the neighbours placed on the front lawn.

Therefore in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to support the reasons given on the Notice to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated June 28, 2012 is cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notice, they are entitled to recover their \$50.00 filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

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: July 24, 2012.

Residential Tenancy Branch