



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause dated July 24, 2012.

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is:

- Is the landlord's issuance of the One-Month Notice to End Tenancy for Cause warranted should it be cancelled.

The burden of proof is on the landlord/respondent to justify the reason for the Notice to end Tenancy under the Act.

Background and Evidence

Submitted into evidence was a copy of the One-Month Notice to End Tenancy for Cause dated July 24, 2012 indicating that the tenancy was being terminated by the landlord because the tenant had significantly interfered with and or unreasonably disturbed other occupants or the landlord. Also in evidence was a copy of the tenancy agreement, receipts, letters and proof of service.

The tenancy began in April 2012 and the rent is \$905.00. The landlord testified that the One-Month Notice to End Tenancy was issued because of the tenant's disruptive conduct and unreasonable interference with other residents.

The landlord testified that prior to this notice, in April 2012, the landlord had issued a reminder notice about noise complaints and in May 2012 sent a written caution.

The landlord testified that, on July 24 2012, the landlord had noticed a young child in the tenant's green space area. The landlord testified that residents had been complaining that children from the playground were wandering in the private areas adjacent to the ground floor rental unit, so she asked the child whether or not he lived in the nearby

suite. The landlord stated that when the child indicated that he did not live in the suite, the landlord sent the child to the playground area to play. The landlord testified that the tenant then appeared and confronted her using foul language.

The landlord testified that, later on while she was in the office, the tenant arrived and quickly became agitated. The tenant began using a loud voice and abusive terminology. The landlord testified that there were several witnesses who were alarmed at this conduct. The tenant abruptly left, slamming the door.

However, a few minutes later, the tenant and co-tenant both came back into the office acting in an aggressive manner causing the office staff to become anxious. The tenants were asked to leave until they "cooled down", but refused. The landlord testified that the tenants proceeded to call them obscene names and threatened to "burn the building down". The landlord testified that the police were contacted.

The landlord testified that, because of the tenant's history of confrontation with other tenants, and this latest incident, a decision was made to issue and serve a One Month Notice to End Tenancy for Cause. The landlord testified that while they were serving this document to the tenant, the tenants shouted insults at the landlord and the witnesses and acted in a menacing way, including issuing a verbal threat to smash in the witness' skull with a baseball bat.

The landlord testified that on August 10, 2012, when they tried to personally serve the tenant with the Notice of Hearing, the tenants again became verbally abusive and a resident, who was driving by, heard the commotion, and stopped the car to make sure that the landlord was not in danger. This witness gave testimony stating that the tenant was yelling and cursing at the landlord, and when the tenant noticed her presence, he began yelling and cursing at her too.

The tenant gave a different version of the events. According to the tenant, the landlord's interference with his son had caused the child to become extremely upset and to cry hysterically. The tenant testified that he felt that it was not appropriate for the landlord to frighten his child. The tenant testified that he was understandably very angry at the time. The tenant stated that he later went into the office hoping to get an explanation and apology, but was made even more angry by the landlord's attitude and his treatment by the staff.

The tenant denied making any serious threats of violence but acknowledged that some name-calling did occur. The tenant pointed out that, when the landlord later appeared in person at the tenant's suite, to serve a One Month Notice to End Tenancy for Cause, the tenant was further provoked because he felt that the witness was staring at him in a hostile manner and this prompted the tenant to make a threat against the individual.

The tenant testified that that he acted this way because he was feared for his own safety.

The tenant testified that the One-Month Notice should be cancelled as it is not supported by the facts.

Analysis – Notice to End Tenancy

It is necessary to establish whether or not the Tenant violated the Act by engaging in conduct that significantly interfered with or unreasonably disturbed others, of a magnitude sufficient to warrant ending the tenancy under section 47 of the Act.

The Guideline gives examples of what may constitute “significant Interference” including serious examples of:

- unreasonable and ongoing noise;
- persecution and intimidation;
- engaging in destructive or violent behaviour

In regard to the term, “unreasonably disturbed”, Black’s Law Dictionary defines “unreasonable” as:

“Irrational; foolish; unwise; absurd; preposterous; senseless;... immoderate; exorbitant; ...capricious; arbitrary; confiscatory.”

In this instance I find that the tenant had, by his own testimony, engaged in conduct that the landlord and other residents would certainly find to be disruptive.

I find that it was understandable that the tenant became upset on July 24, 2012 when he felt that his child had been accosted, and it follows logic that a parent would feel justified in complaining about what had transpired. I find that, if the tenant had merely raised his voice and expressed dissatisfaction with the landlord’s actions and the landlord’s response to his complaint, that would likely be excusable under the circumstances, given his emotional state over his son’s trauma.

However, whatever the situation or reason, I find that yelling, cursing or name-calling is always considered to be significant interference and unreasonable disturbance under the Act, particularly if any of the language hints at violence or has threatening overtones. If this type of conduct occurs on more than one occasion, I find that it would certainly be sufficient to support a One-Month Notice to End Tenancy for Cause.

I find that, even after the unfortunate events on July 24, 2012, the tenant has exhibited a confrontational attitude towards the landlord, and it is a realistic possibility that this ill-

will may continue and could even escalate. I find that other residents are affected by angry outbursts or arguments, in their proximity, even when they are not involved.

Given the above, I find that the Tenant's Application requesting that the Notice be cancelled is not supported under the Act by the facts and must therefore be dismissed.

During the hearing the Landlord made a request for an order of possession. Under the provisions of section 55(1)(a), upon the request of a Landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy.

Accordingly, I so order. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

Based on the evidence and the testimony discussed above, I hereby dismiss the tenant's application without leave. I hereby grant the landlord an Order of Possession effective Friday, August 31, 2012 at 1:00 p.m.

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: August 22, 2012.

Residential Tenancy Branch