



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated August 7, 2012.

The One-Month Notice, a copy of which was submitted into evidence, indicated that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Both parties appeared and gave testimony during the conference call. A witness for the tenant was present.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

The landlord holds the burden of proof to show that the Notice was warranted.

Background and Evidence

The One-Month Notice to End Tenancy for Cause dated August 7, 2012, showed an effective date of September 30, 2012. The landlord testified that the tenant had significantly interfered with and unreasonably disturbed the landlord and other occupants.

The landlord testified that an alarming incident occurred on July 30, 2012 that generated complaints from other residents. According to the landlord, based on the reports received, the tenant had been seen by walking down the halls carrying a knife and was evidently observed knocking on another resident's door.

The landlord testified that, after the tenant was seen, police were called and the tenant was arrested, handcuffed and taken away by law enforcement personnel. The landlord testified that, while she was not present, there were several witnesses to the arrest and one person who reported seeing the tenant walking down the hall with a knife and also alleged that he saw the knife on the ground while the tenant was being handcuffed. According to the landlord, the tenant was detained by police for a few days, and the

landlord believed that charges may possibly have been laid, but could not obtain this specific data from the police.

The landlord submitted copies of 4 written complaints from other occupants or their relatives. The complaint letters were dated August 2, 2012, September 5, 2012, September 6, 2012 and one letter was undated. The landlord testified that the other residents have been traumatized and believe that they are at risk as long as this tenant lives in the complex. Some other residents want to relocate because of what occurred.

The tenant acknowledged that there was an incident involving him on July 30, 2012, but stated that, at no time, did he leave his rental unit prior to the police attending. The tenant stated that he was suffering from depression and other medical issues at the time and became distraught over his mother's recent death to the point he was suicidal. The tenant stated that police were not contacted by "endangered" neighbouring renters, but arrived as a result of a call to 911 by his worried girlfriend.

The tenant testified that there was never any valid fear of him harming anyone but himself and, in fact, he remained in his suite until the police and ambulance attendants removed him. The tenant testified that he was not charged with any offense and was only detained for medical observation, after which he returned and apologized to the landlord for losing emotional control.

The tenant stated that he never had a weapon of any kind, nor did he walk down the hall knocking on anyone's door. According to the tenant, the alleged presence of a knife was a complete fabrication by one particular individual living in a nearby suite who has evidently taken a dislike to him. The tenant stated that the resident in question has purposely generated fear amongst the other residents in the complex by embellishing an unfortunate incident and spread unfounded and malicious rumours.

The tenant produced a witness who testified that she did not observe any disturbance in the halls whatsoever and was not aware of any activity until the police and ambulance arrived.

The tenant pointed out that he has a genuine disability and the fact that he required emergency intervention should not be used against him to unfairly terminate the tenancy. The tenant testified that he has a caring nature and gives back to the community through volunteer work with a nearby charity. The tenant submitted a reference letter from the organization where he volunteers attesting that he is a respectful and pleasant person who is committed to making positive steps towards recovery.

The tenant asked that the One Month Notice to End Tenancy for Cause be cancelled.

.Analysis

Section 28 of the Act protects a tenant's right to quiet enjoyment and this right applies to all residents in the complex.

I find that the landlord did provide proof that the police and ambulance crew came to the complex to remove the tenant on July 30, 2012 and I accept that this development could be perceived by the other nearby residents as alarming or disruptive. That being said, I also find that the need for emergency medical intervention would not likely be considered to be a violation of the Act on the part of the patient.

However, if the tenant engaged in the earlier conduct being alleged, that is walking through the halls with a knife and "banging on doors", I find that this would definitely constitute significant interference with or unreasonable disturbance of another occupant or the landlord. However, the landlord had the burden of proof to prove that this did transpire.

I find that, none of the complainants who wrote about this incident to the landlord appeared as witnesses and thus were not available to be cross examined by the tenant. I find that three of the letter writers did not actually see the tenant walking down the hall with a knife, nor did any report that they had seen a knife at any time. Moreover, none of them saw or heard this tenant banging on their own doors or anyone else's. I find that the letters from three of the four complainants merely reported their reactions to information that was related to them by the fourth complaint.

The undated letter was from the fourth complainant, who is the same individual that the tenant claims dislikes him. The writer alleges that he witnessed the tenant "*walking down the hall of our apartment building with a butcher knife in his hand*" and goes on to state that, "*that same evening he was banging on the door*" of an adjacent suite occupied by a 90-year-old neighbour, "*very deaf and probably fortunate for herself, did not hear the door, so did not answer it*". This complainant stated that, "*After the policeman cuffed him I then spotted the knife laying by the door*".

I find that there was only a single purported witness to the alleged banging on the neighbour's door, which even the occupant apparently did not hear. The same witness was the only person who observed the tenant supposedly prowling the halls brandishing a butcher knife and was apparently the only person who spotted a knife laying on the floor while watching the police and ambulance intervention.

Unfortunately this key witness was not called by the landlord to give testimony directly. I find nobody attended the hearing in support of the respondent landlord who could give

witness testimony about what had occurred prior to the intervention. I find that the landlord did not have first-hand knowledge of the alleged knife incident and relied on reports and complaints to support the One Month Notice to End Tenancy for Cause. Given the above, I find that the landlord offered insufficient proof that the tenant had engaged in any threats or violent behaviour.

With respect to the conduct that was proven to have occurred, that being police and ambulance attendance, I find that, while this may have been inconvenient to residents who were forced to tolerate the disruption, that event alone would not suffice to meet the threshold of significant interference or unreasonable disturbance perpetrated by the tenant, of a magnitude that warrants ending the tenancy for cause.

In cancelling this Notice, I caution the tenant that this decision will serve as a warning that, any conduct that constitutes significant interference or unreasonable disturbance of the landlord or other residents living in the complex in future, could be considered as a valid reason to justify issuing another Notice to terminate tenancy for cause under section 47 of the Act.

Conclusion

Based on the above, I hereby order that the One-Month Notice to End Tenancy of August 7, 2012 be cancelled and of no force nor effect.

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: September 19, 2012.

Residential Tenancy Branch