



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a One Month Notice to End Tenancy for cause and for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The Parties attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witnesses on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?
- Is the tenant entitled to an Order for the landlord to comply with the Act, regulation or tenancy agreement?

Background and Evidence

The parties agree that this month to month tenancy started on March 01, 2011. There is no written tenancy agreement in place as the landlords agent testifies another agent for the landlord failed to put on one place when the tenant moved in. Rent for this unit is \$320.00 per month and is due on the first day of each month.

The landlord testifies that the tenant was served a One Month Notice to End Tenancy on October 17, 2012 by a delivery service which required the tenant to sign for the Notice. This Notice has an effective date of November 25, 2012 and gave the following reasons 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,

The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has

- (i) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- (ii) Jeopardized a lawful right or interest of another occupant or the landlord.

The landlord's agent testifies that the tenant has interfered with the administrator's ability to look after the building by refusing the landlord access to the tenants unit for an annual inspection after a proper 24 hour written notice was served upon the tenant by posting it under the tenant's door as is the landlord's normal practise. The landlord's agent testifies that this is an essential element of his job to identify any deficiencies and safeguard the tenants unit and other tenants living in the building.

The landlord's agent testifies that the tenant had posted a notice on his door preventing the landlord's lawful entry which stated the tenant will charge the landlords agent with unlawful entry if he comes into the unit. The landlord's agent testifies that he knocked on the tenant's door to discuss this and after no response knocked again a little louder. The landlord's agent testifies that the tenant came to the door using foul language and told the landlords agent to read the notice and not to enter. Shortly after the landlord's agent was in his office and the tenant came in swearing and screaming at the landlord's agent. The landlord's

agent testifies that this verbal abuse was assault and lasted about five minutes. Present in the office were the landlord's handyman and plumber who witnessed this abuse. The landlord's agent testifies that he did not come out of his office until the tenant had left.

The landlord's agent testifies that due to the tenant's inappropriate behaviour and verbal abuse the tenant has seriously jeopardized the landlord's lawful right to maintain the building. The landlord's agent testifies that other tenants could hear this verbal abuse of by the tenant.

The tenants advocate asks the landlord how the Notice of entry was delivered to the tenant. The landlord testifies that it was put under the tenant's door as is their normal practise with all the tenants. The tenants advocate submits that this is not a correct form of service in accordance with s. 88 of the *Act*. The tenants advocate also states even if this is accepted as a correct method of service as it was served in this manner the landlord has to allow another three days for the document to be served in accordance with s. 90 of the *Act*. As the landlord failed to do so it renders the Notice of Entry invalid on the day the landlord required entry to do the inspection. The tenants advocate states that the tenant left a note on his door referencing the Residential Tenancy Act concerning these breeches.

The tenant testifies that as the landlords notice was invalid on the day the landlord wanted to enter the tenants unit the tenant felt he had to take a stand against this landlord's agent who wants to do things his way and in non compliance with the *Act*. Therefore the tenant testifies that he did not interfere with the landlord's lawful right, the tenant states he has nothing to hide in his unit and just wants the landlord to do things properly.

The tenant testifies that the landlord started to bang and pound on the tenant's door and was screaming in the hallway to the tenant saying he would take this to his lawyer. The tenant testifies that the landlord's agent has no respect for the *Act* and can break the rules when he wants to. The tenant agrees he did go to the landlord's office after this altercation at his door and agrees he was very angry with the landlord's agent. The tenant testifies that he did swear at the landlord's agent and did raise his voice. The tenant apologises for his

behaviour and states he has no problem with the landlord doing an inspection in his unit he just wants to be given the proper notice in compliance with the *Act*.

The tenant testifies that on another occasion the landlord's plumber entered the tenants unit without proper notice. This plumber opened the tenant door and asked the tenant if the tenant had any hot water and said that the landlord was wondering if the tenant had moved out because they had not seen the tenant. The tenant testifies that he did not give this plumber permission to enter his unit, the tenant states he was sleeping at the time and there had been no problem with the tenant's water for two weeks and there was no reason for the plumber to come into the tenants unit.

The landlord's agent testifies that there had been a problem in the whole building with hot water. The tenant had called on a weekend to say he had no hot water for his shower. The plumber went to the tenants unit four or five times. The landlord testifies that on this occasion he does not know if the plumber entered the tenants unit. The landlord's agent testifies that the tenant had not been seen for a week to 10 days and the landlord wanted to know if the problem with the hot water had been resolved.

The landlord called his witness SK. The witness testifies that he was present when the tenant came to the landlord's office and heard the tenant yelling. The witness testifies he heard the tenant yell at the landlords agent that "if you ever knock on my door again I will fu**ing kill you".

The tenant cross examines the witness and asks how long the yelling went on for. The witness replies 30 seconds to a minute and about 30 to 40 words were spoken.

The landlord calls his second witness DK. This witness testifies he was also present in the landlord's office when the tenant came in. The witness testifies that he did not see the tenant but heard profanities coming from the front office that lasted for about one minute. This witness testifies that he cannot remember word for word what the tenant was yelling but it was something about the landlord's agent going into the tenants unit without proper

notice. The witness testifies the tenants anger was directed at the landlords agent and the tenant did say “if you come into my fu**ing suite I will hurt you real bad”.

The tenant declines to cross examine this witness but states that he fails to see how three able bodied men could be afraid of one man in a wheelchair. If the landlord’s agent was so afraid of the tenant why did he not call the police?

The tenant testifies that he is active in the building community, involved with the social committee, starting an internal food bank to help other tenants and other activities. The tenant testifies that he gets along with the other tenants and this was an isolated incident to which he apologises to the landlord’s agent.

The landlord’s agent states that he just wants to be able to access the tenants unit without further outbursts from the tenant. The landlord wants the ability to be able to go into a unit to maintain a unit if there is an emergency repair.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses. With regard to the tenants application to cancel the Notice to End Tenancy for cause; 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. The parties agree that there was an altercation on the day in question that arose from the landlord’s breach of s. 90 of the *Act* with regard to proper service of the Notice of Entry.

Having heard the testimony I find this is an isolated incident that arose from an incident at the tenant’s door between the tenant and the landlord’s agent. I am not satisfied that this singular incident in the landlords office prevents the landlords from performing their duties to inspect the building as had the landlord served the tenant with a correct 24 hours notice taking into account an additional three days as specified under s. 90 of the *Act* for the time a notice is deemed to have been served; then this incident would not have occurred.

Consequently In the absence of significant evidence to support the reasons given on the notice, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

I do however caution the tenant that any further outbursts such as this will likely result in another One Month Notice to End Tenancy for cause being served upon the tenant.

I further find that the landlord or an agent of the landlord i.e. a plumber is only entitled to enter a tenants unit if there is reason to believe an emergency repair is required. In this instance I find the landlord's plumber did enter the tenants unit without proper notice when no emergency repair was required. I therefore caution the landlord to ensure that he complies with s. 29(1)(f) of the *Act* that states:

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(f) an emergency exists and the entry is necessary to protect life or property.

I also caution the landlord with regards to the landlord's application of the *Act* with regard to proper service of all documents. I strongly suggest the landlord's agent familiarizes himself with section 88, 89 and 90 of the *Act* to prevent any further incidents such as this from occurring and to ensure documents that are required to be served upon a tenant are done so in compliance with these sections of the *Act*. S. 5(1) of the *Act* states:

5(1) Landlord and tenants may not avoid or contract out of this *Act* or the regulations.

With regard to the tenants application for an order for the landlord to comply with the *Act*; **I HEREBY ORDER** the landlord to comply with s. 90 of the *Act* when serving a tenant with further notices to enter a rental unit allowing three days for a notice to be posted or placed in a mail slot and five days if a notice is sent by mail. **I HEREBY ORDER** the landlord to comply with s. 29(1)(f) of the *Act* regarding entry for emergency repairs.

Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause dated October 15, 2012 is cancelled and the tenancy will continue.

I HEREBY ORDER the landlord to comply with s. 90 of the *Act* when serving a tenant with further notices to enter a rental unit.

I HEREBY ORDER the landlord to comply with s. 29(1)(f) of the *Act* regarding entry for emergency repairs.

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: November 08, 2012.

Residential Tenancy Branch