



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNC, MNDC, OLC, FF

For the landlord – OPC, OPB, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants have applied to cancel the Notice to End Tenancy for cause, for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement and to recover the filing fee from the landlord for the cost of this application. The landlord has applied for an Order of Possession for cause and an Order of Possession because the tenants breached an agreement with the landlord; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants, the landlord and the landlord's building manager attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenants 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.

Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution

Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find the tenants have applied for a Monetary Order for money owed or compensation for damage or loss and an Order for the landlord to comply with the Act. As this issues are unrelated to the main issue which is to cancel the Notice to End Tenancy for cause; these issues have not been heard at the hearing today and are dismissed with leave to reapply.

Issue(s) to be Decided

- Are the tenants entitled to have the One Month Notice to End Tenancy cancelled?
- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this month to month tenancy started on March 01, 2005. Rent for this unit is now \$775.00 per month and is due on the 1st of each month.

The landlord testifies that the tenants were served a One Month Notice to End Tenancy on January 10, 2013. This notice was posted on the tenants’ door and gave two reasons to end the tenancy:

- 1) *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,*
- 2) *The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
 - (ii) *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.*

The landlord testifies that the female tenant has verbally assaulted the building manager by uttering threats to the manager. The building manager testifies that this incident occurred when the landlords had changed the locks on all the tenants' doors. The tenants were advised to collect their new keys from the building manager. When the female tenant came to pick up her key she banged loudly on the building managers door and when the door was opened the female tenant started to yell and point at the building manager demanding her keys. The building manager testifies that the tenant started to enter the building managers unit so the building manager locked the door.

The landlord testifies that the female tenant called the landlord and spoke extensively with the landlord about her issues and confirmed that the tenant had banged on the building managers door. The female tenant called the landlord again very late at night around midnight and was very upset going over past grievances that had already been resolved. The landlord testifies that the tenant wanted the landlord to go to the tenants' unit after this second call but she would not tell the landlord what the tenant wanted the landlord to do. The landlord testifies that he had some concerns about her state of mind at that time as she was so upset and her husband was working away.

The landlord testifies that the female tenant also indicated to the landlord that when her husband came home the female tenant would not be able to control her husband and the tenant was afraid of what her husband might do. The landlord testifies that he suggested to the tenant that she call a friend or the police if she was worried. The landlord testifies that he was so concerned about the female tenant's emotional state that the landlord called the male tenant and asked the male tenant to come home to his wife as his wife was so upset.

The landlord testifies that other breach letters have been given to the tenants concerning these matters of verbal assault two were served on December 12, 2012 and one on January 10, 2013. The landlord testifies that he has a duty to protect his building manager from this form of assault and any threats must be taken seriously.

The building manager testifies that the tenant called her and issued threats such as "I will throw the keys to your throat and when my husband comes back he will kill you and they

will find your body in the basement". The building manger testifies that two witnesses overheard this phone conversation.

The male tenant cross examines the landlord and asks the landlord how many managers the building has had since their tenancy. The landlord responds that there have been three building managers in six or seven years. The tenant asks the landlord what the landlord did when the female tenant called the landlord and did the landlord tell the tenant that the landlord was in the middle of dinner. The landlord responds that is not the case and he had listened to the female tenant for over 20 minutes.

The female tenant testifies that when they got the note from the landlord to say the locks had been changed the female tenant had just finished work so did not pick up the keys then. The next day the female tenant went to work and forgot to get the keys from the manager. When the female tenant came home from work she desperately need to go to the washroom but had to get the key to the unit first. The female tenant testifies that she did not bang on the building managers door but simply knocked and when the building manager opened the door she would not give the key to the tenant. The female tenant testifies that she did not scream at the building manager but agrees that she did say the building manager was evil to not give the tenant the key. The female tenant testifies that at this point she urinated in her pants and the building manager throws the keys at the tenant. The tenant testifies that she was very humiliated by the building manager.

The female tenant testifies that she called the landlord to complain but he did not want to listen. The tenant testifies that she dropped the keys on the floor and had to go and change her clothes. When the tenant returned someone laughed at her behind her back so the tenant testifies that she called them a bitch. The tenant testifies that the police were called as the tenants wanted a copy of the landlord's security tapes to show the building manager throwing the keys at the tenant. The landlord would not give the tenants a copy of the tape and the tenant testifies that someone told the tenants that the building manager had destroyed it

The building manager disputes the tenant's claims and testifies that the tenant had banged on the door, the tenant did yell and insult the building manager and frightened the building managers young daughter.

The male tenant cross exams the landlord and asks why the landlord did not release the security tape. The landlord responds that the tenants have never asked the landlord for a copy of that tape.

The landlord cross examines the female tenant and asks the tenant if she had told the landlord that she would not be able to control her husband and her husband will be very angry with the building manager. The female tenant responds that she did not say this to the landlord. The female tenant testifies that she had told the landlord that when her husband comes home she is very afraid of the building manager and how the building manager will instigate things. The female tenant testifies that she had told her husband to stay at his father's as the female tenant did not know what the building manager would do to provoke her husband.

The landlord seeks to recover the sum of \$4.48 for the cost of printing documents from the tenants and has provided a receipt for this amount.

The landlord attempts to offer the tenants a settlement between the parties. The landlord proposes that if the tenants agree to find alternative accommodation the landlord will reimburse the tenants half a month's rent to help with moving costs and will give them three and a half months to find somewhere else to live.

The tenants decline this offer from the landlord and state they may not be able to find alternative accommodation within this time frame.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. 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.

In this matter I have considered the breach letters provided by the landlord in evidence however the tenants have disputed that the incidents occurred as described by the building manager or the dispute letters and have disputed that any threats were uttered against the building manager. The building manager has testified that there were two witnesses to the telephone conversation however the landlord has not chosen to ask either witness to attend the hearing or provided a sworn statement as to what they witnessed. I find therefore from the evidence presented that this is a matter of one persons word against that of the other and therefore the burden of proof has not been met.

It is my decision 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 both tenants and the building manager to exercise control when in the company of each other to prevent any incidents escalating between the parties. I further caution the tenants to ensure they do not prevent the building manager from performing her regular duties in the building.

With regard to the landlords claim for the sum of \$4.48 for the cost of printing documents; there is no provision under the *Act* for any costs associated with printing documents used by a party in a hearing therefore this section of the landlords claim is dismissed without leave to reapply.

As the landlord has not shown that the tenants have either breached the tenancy agreement or *Act* or those grounds exist to end the tenancy then the landlord must bear the cost of filing his own application.

Conclusion

The tenants' application is allowed. The one Month Notice to End Tenancy for Cause dated January 10, 2013 is cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notice, the tenants 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.

The reminder of the tenants' application is dismissed with leave to reapply.

The landlord's application is dismissed in its entirety without leave to reapply.

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: February 08, 2013

Residential Tenancy Branch

