



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Greater Victoria Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC

Introduction

The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause issued on February 07, 2013.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause issued on February 07, 2013 be cancelled?

Background and Evidence

The tenancy commenced on April 01, 2007; rent is due on the 1st day of each month.

The tenancy agreement supplied as evidence includes a clause #22, in relation to parking. The term indicates that a guest may park only in designated visitor parking areas and that the landlord may tow any vehicle improperly parked or parked in a manner contrary to this tenancy agreement.

The landlord and the tenant agreed that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenant is required to vacate the unit effective March 31, 2013. On February 13, 2013 the tenant applied to dispute the Notice.

The reason stated for the Notice to End Tenancy was that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord stated that the Notice was issued as the tenant has repeatedly allowed a visitor to use the visitor's parking area, resulting in a disturbance to the occupants of the unit who reside immediately next to the parking area. The tenant's visitor has a truck that is started in the morning and is so loud that it awakes the neighbouring occupants.

The landlord supplied copies of the following documents:

- February 9, 2012 letter to the tenant in relation to, among other matters, the parking of unauthorized vehicles on the property;
- September 7, 2012 incident report completed by a witness complaining that the tenant's friend leaves the visitor's parking in the morning and that the vehicle "makes lots of noise,"
- September 10, 2012 incident report completed by a witness complaining that the visitor's vehicle was parked overnight for the past 3 weeks and that when it is started each morning at 6:15 it is noisy and wakes the witness up;
- February 7, 2013 incident report completed by a witness that the visitor's vehicle had been parked in the visitor area 3 times during that week and that when it starts it is very loud, especially when it is started prior to 7:15 a.m.;
- February 7, 2013 letter to the tenant from the landlord telling her that her friend may not stay overnight on a regular basis and park on the property as when it is started in the early hours of the morning it wakes other tenants, the letter was accompanied by the Notice ending tenancy; and
- A February 7, 2013 letter from the landlord to a towing company authorizing the company to tow the truck if it is on the property.

The February 9, 2012 letter indicated that unauthorized vehicles would be removed from the premises.

The incident report completed on September 10, 2012 indicated that the building caretaker spoke to the tenant and told her not to allow her friend to park his Mazda truck on the property.

The incident report completed on February 7, 2013 indicated that the caretaker spoke to the tenant and that her guest had said as a visitor he could park in the visitor's area.

The landlord's witness provided affirmed testimony that the tenant's friend's truck wakes them up when it is started in the early morning. The witnesses live in a unit immediately next to the visitor parking area and their bedroom looks out to the parking. The witness said that between September 2012 and February 7, 2013 there were no problems with the truck; it was not being parked on the property. The witness said there was only 1 occasion in February 2013 when the truck disturbed him after being started in the

morning; although his written report indicated there had been 3 occasions during a 1 week period.

The landlord said he has had telephone conversations with the tenant, telling the tenant she must not have the truck in the visitor's parking; dates of these calls were not provided. The landlord stated they had an agreement dating back to February 2012, that the truck would not be parked on the property. The landlord said there are no rules in relation to the visitor parking and that the landlord has the authority to set the rules around use of this space.

The landlord said the only way he has to enforce the rights of the occupants who are complaining is to issue the tenant a Notice ending her tenancy. The landlord requested an Order of possession.

The tenant had 2 witnesses testify; the friend who owns the truck and a woman who resides in the unit above the complainants. Both witnesses also submitted written statements and gave affirmed testimony. The tenant also supplied copies of letters issued by 3 other occupants of the building who stated that they are not disturbed by the truck or the tenant's visitor.

The first witness described his vehicle and said that the muffler system is not illegal. He said that the tenant is disabled and that at times he uses the visitor's parking as it is the easiest way for the tenant to be picked up. At times, when there is space he parks on the street, but that street parking is not always available.

The first witness said that about 1 month ago he was at the tenant's home when the landlord called. He could hear the landlord tell the tenant that he had 12 letters of complaint from other occupants, plus witnesses to disturbances caused by the truck and that the tenant would be evicted. The first witness submitted he found the landlord's behaviour harrasing in nature.

The first witness agreed that he parked in the visitor's area on February 6, 2013 and that when he pulled into the space the landlord's witness came out of his unit and started screaming at him. The first witness called the police and had a file number created, as a record of the incident. He did not want the police to investigate, but did want a record of the incident.

The tenant supplied a letter from an occupant of a unit in the building, who alleged that she witnessed the landlord's witness yelling at the tenant's first witness and the tenant on February 6, 2013. This witness letter indicated that the landlord's witness had yelled at her niece when she parked in the visitor's area and that he does not want to let anyone park in this area.'

Analysis

In a case where a tenant has applied to cancel a Notice issued ending tenancy for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. In reaching this conclusion I considered what I find to be an expected outcome of living next to a parking area where visitor vehicles may park.

Clause 22 of the tenancy agreement indicates that if parking is available a guest may park in designated visitor parking areas and that any improperly parked vehicles or vehicles parked in a manner contrary to the agreement may be towed. The clause does not place limits on the use of parking by a guest and is a term of the tenancy agreement.

Therefore, pursuant to section 62(3) of the Act, I find that the tenancy agreement includes a term that provides visitor parking as a service or facility. I have rejected the landlord's submission that he is at liberty to deny the tenant's guest use of the visitor's parking. Therefore, I find that the landlord may not spontaneously prohibit a visitor from parking in what is known as the visitor's parking area.

The landlord confirmed that outside of Clause 22 of the tenancy agreement, there are no other rules established in relation to parking. There was no evidence before me that the tenant has breached clause 22 of the tenancy agreement. I find that the allegation on the Notice is one of interference and disturbance, not a breach of the parking clause as a result of an improperly parked vehicle or a vehicle parked in a manner contrary to the agreement. The question of significance in relation to the Notice is whether the tenant's guest, by parking in the visitor's area is causing a disturbance in support of the Notice issued.

There was evidence before me that other occupants have written letters stating they are not disturbed. The tenant's second witness lives above the complainant and also has a bedroom that looks out to the visitors parking; she submitted she has never been disturbed by the truck. The tenant's second witness said she does not have a hearing problem and that she gets out of bed between 5 and 8 a.m. and has never been awakened by the truck.

There were no reports made of any disturbance caused, between September 2012 and February 6, 2013. The landlord's witness confirmed that he had not complained and there was no evidence before me of any other complaint made.

I find that when the visitor arrived at the parking area on February 6, 2013, the landlord's witness reacted negatively to the presence of the truck, resulting in a complaint the next day. The landlord then immediately issued a Notice ending tenancy, without any apparent investigation as to what occurred. I do not accept that the parties had reached

an agreement in February 2012 that the visitor would not park in the visitor area; that letter was not signed by the tenant and did not direct the tenant to cease use of the visitor parking area.

I have referenced ***Black's Law Dictionary, sixth edition***, which defines interfere, in part, as:

“To check; hamper. Hinder; infringe; encroach; trespass; disturb...to enter into, or take part in, the concerns of others.”

There was no evidence before me of any significant inference that occurred as the result of the tenant's visitor using the visitor parking area. The occupants of the unit adjacent to the parking area report having been disturbed on February 6, 2013 and clearly do not want the visitor parking his truck in that area. However, I find that the parking of the truck does not form the basis of significant interference; but rather that the complainants seem to be highly sensitive to the sounds of a truck starting its engine.

I find that an unreasonable disturbance would be one which was senseless, foolish, irrational, unwise or absurd, as defined by ***Black's Law Dictionary***; that includes a “danger; hazard; peril.”

I have considered whether the parking of the truck in the visitor area has caused an unreasonable disturbance and I have rejected that submission. I find that it is not unreasonable to expect that living directly next to a visitor parking area might result in the occupant hearing the sound of a vehicle starting. Further, the occupant directly above the complainants reported no such disturbance, which leads me to conclude that ending the tenancy for the reason indicated on the Notice is unjustified.

Therefore, I find that the 1 Month Notice to End Tenancy for Cause issued on February 7, 2013 is of no force and effect. The tenancy will continue until it is ended in accordance with the Act.

Conclusion

The 1 Month Notice to end Tenancy for Cause is of no force or effect.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 13, 2013

Residential Tenancy Branch

