



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

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated February 13, 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. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

Preliminary Matter

The landlord confirmed receipt of the tenant's evidence and the tenant confirmed receipt of an evidence package from the landlord. However, the landlord's evidence was not in the Residential Tenancy Branch file and there was no record of any evidence being accepted from the landlord. The landlord was permitted to fax the evidence package into the Residential Tenancy Branch and this evidence was received and considered.

Issue(s) to be Decided

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

The burden of proof is on the landlord to justify the Notice.

Background and Evidence

Submitted into evidence was a copy of the One-Month Notice to End Tenancy for Cause dated February 13, 2013 showing an effective date of March 31, 2013.

The One-Month Notice to Notice to End Tenancy for Cause indicated that the tenant had:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- seriously jeopardized the health, safety or lawful right of another occupant or the landlord and,
- put the landlord's property at significant risk.

The landlord testified that this tenant had disrupted the quiet enjoyment of other residents, jeopardized their the health, safety or lawful rights and placed the landlord's property at significant risk by permitting individuals to enter his ground-floor suite through the window.

The landlord testified that an incident occurred on January 8, 2013, in which an employee of the complex noticed a person who appeared to be "suspicious" being remotely admitted into the building through the controlled entry. The employee testified that he observed this person go to the tenant's unit where he was greeted at the door and allowed to enter by an unknown woman. According to the landlord's employee, he noticed drug paraphernalia in the suite and asked the woman where the tenant was, but she stated that she did not know. The employee testified that this woman admitted that she had entered the tenant's rental unit, in his absence, through an apparently unlocked window.

The landlord testified that this tenant has been repeatedly cautioned about permitting others to enter his unit through his window in the past, but has persisted in this practice, thereby jeopardizing the security of the building. The landlord submitted evidence including a copy of a May 29, 2012 communication to the tenant about a report received from a third party that a person who had been observed using drugs on the property was then apparently seen climbing into the tenant's window. The letter cautioned the tenant that:

"This behavior must stop immediately. You must not allow guests to enter your suite through the window."

The landlord testified that, prior to the May 29, 2012 communication above, the tenant had been issued a One Month Notice to End Tenancy for Cause because of an incident that occurred in February 2012, when the tenant had parked his scooter in front of a fire extinguisher box. The landlord pointed out that, at the hearing held on March 8, 2012, the tenancy was reinstated by agreement, but with the following caution to the tenant from the Residential Tenancy Branch arbitrator:

“The tenant is strongly cautioned that this is the Landlord’s final warning to him to abide by the rules of the Landlord in relation to the rental property. Any subsequent breach of the Act or agreement may lead to the tenancy ending and the tenant being evicted from the rental unit.”

The landlord testified that, in the past, the tenant has been repeatedly warned to stop using his rental unit as a “drop-in” for street people. The landlord’s evidence included a letter, dated October 23, 2012 alleging that this practice had resulted in an infestation of bedbugs in the unit, which the tenant denied had occurred. Also in evidence was a copy of a letter from the landlord to the tenant, dated October 4, 2010, stating that a report had been received by the landlord alleging that the tenant was allowing people who were dealing drugs or are “hard core street people”, into the building. This letter was apparently based on an incident report based on a complaint from another resident, and the tenant argued that this complaint had no merit. The landlord submitted evidence of other notifications issued during the year 2009 that were sent to the tenant about his conduct and that of his guests.

The landlord stated that the recent incident relating to the intruders has seriously jeopardized the health or safety of another occupant or the landlord and placed the landlord’s property at significant risk. The landlord’s position is that the tenant’s repeated violation of building rules, despite numerous warnings, would justify enforcement of the One Month Notice to End Tenancy for Cause.

The tenant testified that the recent incident occurred in his absence while he was travelling and he was away from his suite at the time. The tenant testified that he had no knowledge that anyone had entered his suite and if this happened, they did so without his permission. The tenant testified that he has now installed bars to prevent people from opening his window to enter.

The tenant stated that many of the complaints and accusations that have been leveled against him by other residents in the past were never verified to be true and were due to persecution of the tenant by certain individuals. The tenant stated that unproven reports were unfairly accepted, consisted of hearsay and were improperly placed on his record by the landlord.

The tenant pointed out that the subject of the previous hearing related to the parking of his scooter, not the issue of circumventing door security by allowing outside persons to access the building.

The tenant pointed out that he has been a good tenant living peaceably in the complex since 2006. The tenant acknowledged that he does permit people to visit him in his home, but he does not encourage people to randomly come and go at will and he

denied that he has ever intentionally undermined the building's security procedures. The tenant believes that it is his right, under the Act, to welcome guests of his choosing, regardless of how others may judge them. The tenant believes that there is insufficient grounds to terminate his tenancy and has asked that the One Month Notice to End Tenancy for Cause be cancelled.

Analysis

I accept the landlord's testimony that the landlord and some other residents in the building have ongoing concerns about the nature and lifestyles of some of the tenant's visitors who have been categorized as "hard core street people". That being said, with respect to a tenant's right to have guests, I find that section 30 (1) of the Act prohibits a landlord from restricting a tenant, including his guests, from accessing the property.

Section 28 of the Act also protects a tenant's right to quiet enjoyment.

However, the right to quiet enjoyment also applies to other residents in the complex as well as the tenant himself. Therefore, if it is proven that the tenant or his guests have genuinely violated any other resident's right to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference;.

then I would have to find that the conduct in question may qualify as a valid cause to end this tenancy. In the case before me, I find that the landlord has not sufficiently proven that the tenant, or persons permitted on the property by the tenant, have significantly interfered with or unreasonably disturbed another occupant of the residential property in a tangible manner.

In regard to the two other causes put forth by the landlord, including the allegation that the tenant had seriously jeopardized the health, safety or lawful right of another occupant and the allegation that the tenant put the landlord's property at significant risk, I find that any tenant who encourages or purposely permits outside individuals to circumvent the security entrance of the building, could be considered guilty of seriously jeopardizing the health, safety or lawful right of residents living in the complex and possibly placing the landlord's property at significant risk.

Although the tenant's record may contain complaints and allegations that were not verified as true, dating back to 2009, I find that there have also been several proven transgressions and it is an established fact that the tenant has failed to diligently observe some rules of the building in the past. Moreover, this tenant was already officially cautioned about the consequences of not adhering to the Act and agreement in a previous Dispute Resolution decision issued by a Residential Tenancy Branch adjudicator approximately one year ago.

In this most recent dispute, however, I do accept the tenant's testimony that he was not aware that these other individuals had accessed his rental unit in his absence. I accept the tenant's testimony that he did not intentionally leave his window unlocked for this purpose thereby risking his own possessions. That being said, I find that the tenant was careless, if not negligent, by going out of town without properly securing his rental unit and failing to ensure that the ground-floor window was locked up.

While I am prepared to extend the benefit of the doubt in the tenant's favour, in cancelling this One-Month Notice to End Tenancy for Cause, I do so with a final caution to the tenant that he must be prepared to comply with the Act and his tenancy agreement in every respect, for at least the next year, or he will be knowingly putting the future of his continued tenancy in this complex at risk.

Based on the above, I hereby order that the One-Month Notice to End Tenancy of dated February 13, 2013 be cancelled and of no force nor effect.

Conclusion

The tenant was successful in the application seeking to have the One-Month Notice to End Tenancy for Cause cancelled, but was cautioned that failure to comply with the Act and agreement in future could result in the end of the tenancy.

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: March 07, 2013

Residential Tenancy Branch