



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SEA-TO-SKY COMMUNITY SERVICES
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

CNC, OPC, FF

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated February 8, 2013 with an effective date of March 31, 201. The landlord also made a cross application requesting an Order of Possession be granted based on the One Month Notice to End Tenancy for Cause.

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.

The One-Month Notice to Notice to End Tenancy for Cause, 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 and that the tenant had seriously jeopardized the health safety or lawful right of another occupant or the landlord.

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 were: copies of complaints and witness statements, copies of incident reports, copies of communications, written testimony and a copy of the tenancy agreement.

The tenant resides in a ground-floor suite in the complex. The tenancy began in September 2011 and is based on a month-to-month tenancy agreement.

The landlord testified that the tenant and some other residents have not been getting along and the complex management has tried to problem-solve this matter for quite some time without success. The landlord gave testimony describing 3 incidents involving the tenant that the landlord felt would support a termination of this tenancy for cause.

First Incident

The landlord described an incident, which occurred on April 12, 2012. This involved the tenant's daughter's car being towed by the complex management because it was parked in a prohibited spot. The landlord testified that this prompted a hostile reaction from the tenant towards the landlord. The landlord testified that, despite the fact that the tenant was in the wrong for not following the rules, the tenant became verbally abusive towards the landlord and acted in a threatening manner.

The tenant denied that he had been verbally abusive or threatening in any respect. The tenant acknowledged that he was extremely irate because his daughter had parked in the same spot every Sunday night and he felt that there was not sufficient signage to warn visitors about this restriction. The tenant pointed out that there are vacant units and ample parking spots, so the vehicle had not created any problems in the complex. The tenant stated that he had fully resolved the matter by dealing with the executive director of the complex.

Second Incident

The second incident, described by the landlord, occurred on August 19, 2012 and stemmed from a complaint received from another resident in the complex who reported that the tenant had yelled out the window at resident's visiting relative regarding where the visitor had parked her vehicle. The affected resident appeared as a witness and testified that, after the tenant had shouted at his mother who was in the parking lot, the resident came out and observed that the tenant and his daughter were looking out from their window. The resident complained that, later on, he was directly confronted by the tenant and his daughter and an argument ensued. According to the resident, there was name-calling and foul language was used.

The tenant testified that they only called out from the window to warn the visitor that her car could be towed. The tenant testified that, when the resident appeared and started to criticize the tenant and his daughter, they came out to explain what their intent was. The tenant testified that this ended up in a confrontation with the resident calling the

tenant's daughter derogatory names and warning the tenant to mind his own business. The tenant testified that he wanted to lodge a complaint about the incident himself, but the executive director, with whom he had dealt about the towing issue in the past, was away at the time, so he let the matter pass. The tenant testified that his side of the story was never investigated by the landlord.

Third Incident

The third incident stemmed from a complaint of verbal abuse, allegedly perpetrated by the tenant, reported to the landlord by a woman who resides near the tenant's unit on the ground floor of the complex. This resident appeared as a witness and testified that, on October 11, 2012, as she was at the mailbox picking up her mail, the tenant drove up and she merely said "*hello*" to him in a friendly manner. The resident testified that this prompted a verbal tirade from the tenant who yelled and ranted at her. The resident stated that she tried to placate the tenant by pointing out that normal people often say "hi" to each other. However, according to the witness, this explanation had the effect of infuriating the tenant further. The resident stated that she was then subjected to a torrent of abusive language. The resident stated that this upset her to tears and has caused her to fear the tenant.

The tenant stated that this particular resident makes it a practice to purposely approach him with sarcastic greetings at every opportunity, despite having been told repeatedly by the tenant that he did not welcome her commentary. The tenant testified that, after he made his wishes clear, the resident began to go out of her way to goad him, even greeting his cat. The tenant testified that he feels that he is being subjected to a form of harassment by this particular woman. The tenant denied using any foul language against the resident.

Recent Incident

The landlord stated that, more recently, the tenant was involved in yet another incident. The same two witnesses who had already testified above, related what occurred on January 31, 2013. The tenant was seen, by the male witness, standing outside his unit and was overheard loudly discussing concerns with two other individuals.

The male witness went to check up on the female witness who was ill and confined to her home for the day, as he wanted to make sure that she was alright. The female witness was the same one who had who reported the October mailbox incident. She stated that when her fellow resident came to visit her, she was upset because the tenant had been banging on her door, which terrified her, and she refused to answer. She stated that the tenant was later heard talking outside her door about her, and the nature of the discussion was threatening. The tenant was complaining about things that

the female witness had outside her door. The female witness testified that she noticed the tenant trying to peek in her window.

The male witness stated that, earlier when he had been out walking with a friend, they passed by the tenant and the other two individuals, a man and woman, with whom he was conversing. The male witness testified that the man talking to the tenant made what was perceived as a threatening a comment to the witness. The witness admitted that he was so alarmed that he then retorted, "look hard retard", from four feet away

The male and female witness stated that, they decided to go out for some "fresh air" and at that time observed that the tenant and his friends were milling about bad-mouthing people and acting like a "pack of dogs".

The two witnesses stated that they decided to walk down to the police station to report the tenant's hostile demeanor that he had displayed towards them.

The tenant disputed the witness's testimony and stated that, at no time did he act in a threatening manner towards anyone. The tenant called their testimony a "complete fabrication". The tenant stated that, on many occasions, he has felt unsafe and bullied by the two resident/witnesses. The tenant pointed out that he is frail and elderly and could not pose a physical threat to anyone, particularly these young people who have been harassing him.

The tenant stated that, the day before the above incident, he had noticed some dog droppings outside of the female witness's unit and the following morning, on January 31, 2013, he noticed that someone had placed the dog droppings right in front of her door.

The tenant testified that he suspected he would be blamed for this and this was later proven to be the case because the same dog droppings were apparently moved in front of his door, by a person unknown. The tenant felt that this was done in reprisal for something that he had no involvement in. The tenant stated that he did contact the landlord's staff member to express his concerns about what was going on, but was met with no sympathy.

The tenant testified that he was hoping to find out exactly what had happened. The tenant testified that this is the reason he had attempted to contact the female witness and knocked on her door. The tenant testified that he was not being confrontational, but merely wanted to clear the air. The tenant denied peeking into the witness' windows.

The tenant stated that the landlord had collected biased data from people whose motive was to drive him out of the complex. The tenant testified that the landlord had not afforded him a fair opportunity to give his side of the story. The tenant testified that the

landlord refused to do a proper investigation. The tenant pointed out that no warning letters have ever been issued to him and he suddenly was served with an eviction notice that he never expected.

The tenant feels that the Notice has no merit and should be cancelled.

The executive director stated that significant attempts to mediate between the combative tenants have been tried but have not succeeded. The director stated that the situation has been escalating for some time. The director stated that the tenant was offered another unit, but the only units now available are not located on the ground floor and this affects the tenant's ability to keep his pet cat. However, if this tenancy is not ended, the landlord stated that, they are still willing to consider the tenant for a move to any ground floor unit that may open up in future.

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 conduct described, while it may have been inappropriate given the history of the tenancy and the sensitivity of the current situation, is not sufficiently significant to warrant ending the tenancy for cause.

Specifically, I find that the evidence being relied upon was verbal in nature and was disputed in almost every respect. I find it likely, on a balance of probabilities, that the escalating problems cannot be attributed solely to the tenant alone. Moreover, I find that the landlord has received conflicting data, and has never succeeded in verifying the exact nature of the reported exchanges, nor has the landlord issued any warning letters to the tenant or other residents involved in the incidents.

Accordingly, I find that the One-Month Notice must be cancelled.

The tenant is cautioned that this decision will serve as a warning and the tenant is now aware that, if any significant interference or unreasonable disturbance is inflicted on the neighbouring residents, this conduct could be considered a valid reason to justify another Notice to terminate tenancy for cause under section 47 of the Act.

Given the above, I find that the One Month Notice to End Tenancy for Cause dated February 8, 2013, must be cancelled. In cancelling this Notice, I hereby order that:

- Both the tenant and the landlord restrict communications with each other to written form, and avoid direct verbal conversations unless absolutely necessary.
- the tenant refrain from communicating directly with other residents, including any inappropriate gestures or loud conversations with third parties that can be

overheard by others. Instead the tenant must communicate any valid concerns about his neighbours to the landlord in written form.

The expectation is that the landlord will:

- give a written response to concerns expressed by this tenant and the other residents,
- impartially investigate complaints without unduly inflaming the situation or siding with one party, and
- maintain accurate records.

Based on the above, I hereby order that the One-Month Notice to End Tenancy February 8, 2013 be cancelled and of no force nor effect. I further order that the tenant is entitled to be compensated for the \$50.00 cost of this application and may reduce his next rent payment by this amount.

The landlord's application is dismissed.

Conclusion

The tenant is successful in the application and the One Month Notice to End Tenancy for Cause is cancelled, with a caution to the tenant and an order that the parties communicate in writing only. The landlord's cross application seeking an Order of Possession is dismissed without leave.

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 14, 2013

Residential Tenancy Branch