Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FF

Introduction

The tenants applied to cancel a 1 Month Notice to End Tenancy for Cause and return of the filing fee cost.

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 May 15, 2013 be cancelled?

Are the tenants entitled to filing fee costs?

Background and Evidence

The tenancy commenced on May 15, 2007; the tenants rent a site in a manufactured home park. Site rental is currently $332.00 per month, due on the 1st day of each month.

On May 29, 2013 the tenants received a 1 Month Notice to End Tenancy for Cause and disputed the Notice within the required time-frame.

The landlord and the tenants agreed that the Notice requires the tenants to vacate the rental unit on July 1, 2013.

The reasons stated for the Notice to End Tenancy were that the tenants have:

- been repeatedly late paying rent; and
- significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord provided affirmed testimony that the Notice has been issued as the result of late rent payments made in January and May 2013 and August 2011. The tenants

did not dispute that rent had been paid late in those months. Copies of bank information were supplied, showing rent payments had been returned as NSF.

The landlord stated that the tenants have allowed visitors to park on the road, in breach of the Park Rules. Term 6 of the Park Rules supplied as evidence by the tenants indicates that no parking is allowed on the street or lawn at any time. There is a visitors parking area.

It was not in dispute that on March 2, 2013 the tenant had numerous visitors who had parked on the road. Within 10 minutes of a complaint having been made the cars were removed. A neighbour wrote a letter of complaint for use during this hearing; she alleged that the vehicles on the road would block emergency personnel from accessing her home, should the need arise.

On March 2 the landlord's agent and the neighbour who had complained went to the tenant's site; and in response to the complaint, the tenant agreed that during the conversation he hugged and kissed the landlord's agent. The tenant said the agent was very angry and that he chose to respond in that manner vs. punching the landlord, as the landlord was yelling and shouting at the tenant. The tenant thought that his actions would calm the landlord down.

The landlord denied he had been angry and said that when the tenant first hugged and kissed him he told the tenant to stop and that the tenant then hugged and kissed him again. The landlord said that he grabbed the tenant by the arms and pushed the tenant away from him.

The tenant did not dispute that in January 2013 he had responded to the landlord's agent by hugging him and telling him he loved him. The landlord was present during this encounter. The landlord said that her agent can be loud but that he has hearing problem which likely causes him to speak loudly.

The landlord said that the tenant was bothering a neighbour who lives across the road. The tenant did not deny that he had been told to stay away from that neighbour and agreed that in November 2012 he left the neighbour a note apologizing for being a nuisance and that he would not bother her any more. A copy of this note was supplied as evidence.

The tenant did not dispute that he went to the neighbour's home in January 2013; that he knocked on the door and window. The tenant said he was trying to be friendly. The landlord said that the neighbour is afraid of the tenant and that he knew he was not welcome on her site. A copy of a letter of complaint from the neighbour issued on September 23, 2012 was supplied as evidence. The parties agreed that since January 2013 there are not been any further problems reported by the neighbour.

The landlord said that the Park Rules were updated in 2007 and as the tenants have a copy from 2004 an updated copy will be given to the tenants.

Analysis

In a case where a tenant has applied to cancel a Notice to End 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.

In relation to repeated late payment of rent Residential Tenancy policy suggests that 3 late payments are the minimum number sufficient to justify a notice under these provisions. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late.

There is no dispute that since September 2011 there have been only 2 late rent payments. Therefore, based on policy, which I find takes a reasonable stance; I find that the tenants are not currently repeatedly late making rent payments.

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.

There is no doubt that some friction exists between the landlord's agent and the tenant. The landlord described on-going problems with parking on roads; which is a breach of the Park Rules. These problems, combined with what I find to be inappropriate behaviour on the part of the tenant have aggravated the landlord and resulted in the Notice ending tenancy.

I find that by hugging and kissing the landlord's agent the tenant is crossing a line into an area of inappropriate behaviour. I do not think it could be argued that the tenant has a right to encroach on the landlord by hugging and kissing him; just as the landlord would not have the right to do so to the tenant.

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."

When the tenant decided to hug and kiss the landlord I find that the tenant did infringe on the landlord's rights and that as a result the tenant did encroach on the landlord. I have considered this behaviour and the absence of any written notice given by the landlord when the same behaviour was displayed by the tenant in January, 2013.

In the absence of any written warning or any other hint that this behaviour could result in eviction I find that the landlord has not met the burden of proving a significant interference or unreasonable disturbance by the tenant. However, the tenant is now on notice that if he were to hug, kiss or interfere in any way with the right of the landord to be unimpeded, that that tenant could ultimately be found to have significantly disturbed the landlord.

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."

As there have not been any further problems reported by the neighbour and the parties have agreed that since January 2013 the tenant has not communicated with that neighbour, I find that the past issues do not support eviction based on an unreasonable disturbance. Four months have passed since any contact occurred with that neighbour. Again, the tenant is now well aware that contact with the neighbour could result in further action by the landlord.

In relation to parking, the tenants are aware that their guests may not park on the road. Guests would include anyone who is attending at the tenant's home. Therefore, it is the responsibility of the tenants to ensure that their guests park in the visitors parking area. The tenants cannot avoid this responsibility.

The landlord has a responsibility to provide the tenants with notice of parking that has occurred in breach of the Park Rules and has a right to take action if the Rules are breached. However, there was no evidence that the parking is an issue that has placed anyone in serious jeopardy or that this has unreasonably disturbed another occupant or landlord. The allegation that emergency vehicles would not be able to access other homes was not proven.

Therefore, I find that the Notice ending tenancy on May 15, 2013 is of no force or effect. The tenancy shall continue until it is ended in accordance with the Act.

I have declined filing fee costs to the tenants.

Conclusion

The Notice to End Tenancy for Cause issued on May 15, 2013 is of no force and effect.

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: June 26, 2013

Residential Tenancy Branch