



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution made by the tenants to cancel a 1 Month Notice to End Tenancy for Cause and for a monetary order for damage or loss under the *Act*.

The landlord who is the building owner and one of the tenants appeared for the hearings. The tenant made the application and served the landlord with a copy and the Notice of Hearing documents personally in accordance with the Residential Tenancy Act. Both parties also served a number of evidence packages to each other. However, the tenant stated that he received one of the evidence packages late but still wanted to continue with the hearing. As a result, the hearing continued but was eventually adjourned to allow the tenant more time to present his evidence. No other issues of service of documents were raised by the parties.

While both parties provided an abundance of documentary evidence prior to the hearing and affirmed testimony, I have only referred to that evidence which is relevant to the issues applied for by the tenant in this Decision.

Issue(s) to be Decided

- Has the tenant established that the notice to end tenancy ought to be cancelled?
- Has the tenant provided sufficient evidence for his monetary claim of \$5,000.00 for loss of quiet enjoyment?

Background and Evidence

This tenancy started on January 1, 2012 for a fixed term of six months which then went onto a month-to-month basis. The landlord collected a security deposit and a pet damage deposit from the tenants on December 21, 2011 in the amount of \$540.00

each. Rent in the amount of \$1,050.00 is payable by the tenants on the first day of each month.

The landlord testified that on June 6, 2013 the property manager of the building gave a written notice, provided as evidence, to the tenant asking for his trailer to be removed from the car park as it was unsightly and unsafe. The landlord testified that this enraged the tenant causing him to confront and harass the building manager in person and via text messages.

As a result, the landlord decided to visit the tenant on June 10, 2013 to talk to him about the notice and ask him to stop harassing the building manager about it. The landlord testified that when she knocked on the door the tenant opened it and when she asked to talk about the issue the tenant slammed the door on her; she left only to be chased by the tenant with a camera who was recording a conversation in which the tenant was shouting at her and asking her questions but not giving a chance to respond.

The landlord testified that the tenant has been harassing other tenants in the building including members of management and has a long violent history in the building.

As a result, the landlord personally served the tenant with a 1 Month Notice to End Tenancy for Cause on June 24, 2013. The notice was provided as evidence and states that the expected date of vacancy is July 31, 2013. The notice states that the reason for ending the tenancy is because the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that the tenant continues to vent his fury, rage and anger towards the management team through verbal threats and harassing phone calls; most of these are to do with the fact that the tenant alleges that the building fire standards have not been upheld.

The landlord testified that, after receiving the eviction notice, the objective of the tenant was to cause harm and disrupt the business as much as possible. The landlord claims that the tenant has caused the following damage to the building: newspapers scattered on the common area floors; windows and entry key pads were smeared with dog excrement; the elevator doors were scratched and when they are painted, the tenant scratches them again; and the word 'DIE' was scratched onto the elevator door on the ground floor.

In support of the above allegations the landlord provided the following evidence:

- An incident report from one of the building managers on duty at the time on June 4, 2012 during which the tenant and the building manager had a conversation in which the tenant yelled at the building manager using abusive language regarding a breach letter he had been issued cautioning him to have his dogs on the leash. The report indicates that the tenant threatened the building manager with the loss of her job.
- 2 statements from previous tenants who had resided in the building stating that they were forced to move out because the tenant had threatened, assaulted and bullied them.
- An unsigned statement from another building manager stating that the tenant had threatened him in the elevator of the building stating that he knows gangs and will be returning once he leaves. The threats made were further corroborated by another tenant in the building who completed a statement to this effect.
- A statement from a resident of the building stating that she saw a tenant talking about an arbitration case stating that the landlord did not have a case and that the same tenant was then asking residents to sign a letter. However, it does not name the tenant in this application as being the one she was talking about.
- 6 pictures of a text message sent by the tenant on June, 9, 2013 to the building manager which states "Fuck u!!! U guys don't even do your job!! U dare to try and walk into my house!! U guys don't even do the fire inspection for months and risk our lives and u talk to me about the trailer???? How dare u!!!" The text message goes on to make additional threats about taking the landlords to court saying "Tell ur fucking head office to go ahead and fuck with me if u wanna find urselfs in court"
- Photographs showing peanut shells and newspapers littering the foyer of the building and in the elevator, scratches to the wall, spit on windows, excrement on the entry key pad, excrement which was used to stick notices, that the landlords had issued to all the tenants in the building, to the foyer windows.
- A document showing a criminal history of the tenant which documents three incidents of violent behavior of the tenant.

The tenant testified that he disagreed with all of the evidence that the landlord had presented stating that the landlords had coerced other tenants into providing the evidence used in the hearing. The tenant testified that it was not him that caused all the damage to the building or used spit and dog excrement to soil the common areas. The tenant testified that he was not in the building when these incidents are alleged to have occurred.

The tenant also testified that he was concerned about the building fire safety inspection, and that when he had tried to address this issue with the landlord they started a vendetta to get him out of the building as a way of not dealing with the issues.

The tenant then presented his evidence which included the following relevant material:

- A petition signed by over 30 tenants in the building stating that they had not seen the tenants vandalize or dirty the building and that the tenants are polite, helpful and generally good neighbours and have been so for the last two years;
- A character witness statement from a tenant in the building describing the tenants as helpful and that the building management team were asking tenants to spread false information about the tenants;
- A letter from another tenant in the building stating that they had been approached by management to write a letter about the tenant in this application and falsify that he had vandalised the building; the author of the letter goes on to say that it was management that he actually had an issue with;
- Two medical notes which show that the tenant is highly sensitive to unexpected and loud noises and that as a result of the landlord harassing the tenant his medication for stress had to be increased. As a result, the tenant claims \$5,000.00 for his loss of enjoyment of the rental suite and for the mental pain, and time taken off work;
- A signed letter from tenants in the building who witnessed the tenant in this application being harassed by other tenants from a neighbouring building. The tenant in this application claims that the landlord had asked this person to harass them. As a result the police were called and the person harassing the tenant was entered in to a peace bond;
- Notices issued to all tenants in the building by management stating that there have been incidences of damage to the building and that efforts are being made to evict this tenant. The notices go on to ask for future incidents to be reported. However, the letter does not name the tenant as being the one responsible;
- A photograph of the broken dog leash which the tenant testified was broken as a result of the elevator doors malfunctioning. The tenant claims that the landlord failed to repair this elevator and seeks monetary compensation in the amount of \$50.00 for a replacement dog leash. However, no request was made in writing to the landlord to have the elevator repaired; and
- A DVD video which shows the tenant confronting the landlord after the notice was issued to the tenant about the removal of his trailer. The tenant testified that the landlord was shouting and banging at his door. As a result, he grabbed his video camera and went into the corridor area to confront the landlord about

the reasons for this, at the same time recording the conversation. The tenant testified that the landlord walked towards him in an aggressive manner and put her foot inside of the door at which point she pushed him in the chest and kicked him in the shin.

The landlord disputed the evidence provided by the tenant stating that a repair bulletin board is provided to all tenants to put their concerns and requests for repairs in writing which the tenant did not. The landlord testified that they are seeking an order of possession based on the fact that the tenant has significantly or unreasonably disturbed another occupant or the landlord.

Analysis

When a landlord issues a tenant with a 1 Month Notice to End Tenancy because the tenant has significantly interfered with or unreasonable disturbed another occupant, the landlord bears the burden of proof as to why the notice was issued.

After examining all of the evidence in this case I find that, while the landlord has provided evidence to support a case to end the tenancy, the tenant has also supplied a number of witness statements, including a signed petition of over 30 tenants residing in the same building, to refute the landlord's allegations that the management team were being harassed by the tenant. I find that this large number of tenants is a significant amount to dispute the evidence submitted by the landlord.

In making my decision as to whether the notice to end tenancy should be cancelled, I reviewed the evidence of the landlord. I have not considered the photographs showing the damage as there is no corroborating evidence that satisfies me it was the tenant that caused the damages. I have also excluded the criminal history of the tenant as this is not relevant to the reasons why the tenant was given the notice and was not submitted as an official police record. I have also not considered any of the statements provided by the landlord or tenant since they are both refuted by the other party in affirmed testimony and supporting written documentation.

As a result, this leaves the photographs of the text message sent by the tenant to the landlord and the DVD video footage provided by the tenant to base my decision on. I find that whilst the text message was abusive and threatening, on its own, it is not of a sufficient nature to significantly interfere with or unreasonably disturb the landlord.

In relation to the video footage, I find that the testimony of the tenant does not appropriately match the video footage. The video footage shows the landlord walking

towards the tenant but not in an aggressive manner; this was further evidenced by the footage which showed the landlord had her hands behind her back at all times. The tenant claimed that the landlord pushed him in the chest and kicked him in the shins. However, the video footage does not show this. The video footage does show, however, the landlord putting her foot in the door and I find that it would have been more appropriate, on this occasions, for the landlord to have avoided the confrontation by walking away. In my analysis of the video footage I find that it was the tenant that was the aggressor and not the landlord. The tenant proceeded to shout, swear and barrage the landlord with questions giving her no opportunity to answer them.

As a result, I find that while both parties have provided sufficient evidence for this case, the landlord's evidence is no more compelling than the tenant's evidence. Therefore, I find that the landlord has not met the burden of proof in this case and as a result, I cancel the notice to end tenancy issued by the landlord to the tenants.

In the same respect, the tenant has not provided sufficient or compelling evidence, such as a receipt for the dog leash, written repair requests for the elevator or documentary evidence to support lost wages. As a result, the tenant has not proved his claim for monetary damages and therefore I dismiss this portion without leave to re-apply.

However, I would caution the tenant that there are remedies under the *Act*, which the tenant should have sought if the tenant had concerns about issues surrounding building maintenance which the tenant feels that a landlord is failing to complete. These remedies are still available to both parties as the tenancy resumes.

Conclusion

For the reasons set out above, I cancel the 1 Month Notice to End Tenancy for Cause issued by the landlord to the tenants on June 24, 2013.

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: August 08, 2013

Residential Tenancy Branch

