



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTRAL OKANAGAN KIWANIS COMMUNITY SERVICE SOCIETY
and [tenant name suppressed to protect privacy]

AMENDED DECISION

Dispute Codes OPC, CNC, OLC

Introduction

This hearing was convened by way of conference call in response to an application made by the landlords for an order of possession for cause. The tenant made an application to cancel the notice to end tenancy for cause and for the landlord to comply with the *Act*, regulation or tenancy agreement.

Both parties appeared for the hearing. The landlord and tenant were represented by lawyers who appeared for the hearing and presented the majority of evidence. At the start of the hearing no issues with regard to the service of documents under the *Residential Tenancy Act* were raised by either party.

One of the landlords, the tenant and a witness provided affirmed testimony during the hearing and the parties had also submitted documentary evidence prior to the hearing. All of this was carefully considered 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 the landlord to comply with the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to an order of possession based on cause?

Background and Evidence

Both parties agreed that this tenancy started on October 1, 2008 on a month-to-month basis. The landlord collected a security deposit from the tenant on October 1, 2011 in the amount of \$227.00. A written tenancy agreement was completed and the landlord testified that the tenant is required to pay subsidised rent in the amount of \$296.26 on the first day of each month. The tenant is responsible for his own utilities which includes cable television.

The landlord issued a 1 Month Notice to End Tenancy for Cause on June 21, 2013. This was served to the tenant, via a process server, on June 24, 2013 and provided as evidence for the hearing. The notice details the expected date of vacancy as July 31, 2013 and the reason for ending the tenancy is because the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord's lawyer presented the following evidence that led up to the tenant being served this notice.

Notice of Inspection Incident

On January 10, 2013, the Property Administrator (FO) attended the third floor of the building with the president of the tenants' committee (SM), in order to serve all the residents on that floor a notice for the annual inspection. This notice was provided as evidence and stated that the inspection was going to take place on January 23, 2013 and was being done as part of an extensive effort to clean, repair and update the entire building.

SM and FO attended the tenant's suite, knocked on the door, and SM personally served the tenant with the notice explaining that it was being given to all residents. The tenant then went back into the apartment and SM and FO walked off down the corridor. As they got down the corridor the tenant came out the apartment and aggressively walked towards them both, yelling loudly that they had no right to do this inspection and that they were picking on him. The tenant was screaming so loud that other tenants came out of their suites to see what was going on. The tenant then called FO a 'son of a bitch' and a 'fucking liar' and accused him of stealing his birds.

FO and SM tried to walk away but the tenant followed them and this time shouted at SM as to why she was involved in issuing these notices. The signed affidavit of SM states that this verbal abuse went on for 5-10 minutes during which time SM feared for her and FO's safety. As a result, SM stated that in her statement that she fell to the floor and put her head down against her chest for fear of the tenant. As other residents were opening their doors to see what was going, the tenant left and went back to his room.

FO and SM quickly left down the stairs and went to the front office. SM then went back to her room in order to take some medication and lay down because the incident was so distressing to her.

FO remained in the front office with the building Administrative Assistant (ER). A few minutes later the tenant appeared in the front office and started to yell at the both of them. Based on the sworn affidavit of ER, she then locked the front office door with FO and called the police from another room because the tenant was shouting so loud. When the police arrived they spoke to the tenant and it took them some time to calm him down. A police report, provided as evidence, stated that the tenant was agitated and stressed. The report states that the police advised the tenant that the landlord had a right to enter the unit and that the tenant should look to seek police or third party assistance when the inspection was scheduled to take place. No further action was taken.

In her sworn affidavit, ER states that she saw SM who was shaking and crying from this incident and this unnerved her. ER also confirmed in her statement that the notice of inspection was delivered to all tenants on the third floor and not just the tenant in this application. ER, FO and SM all state that it is difficult to work in the building as they feel intimidated and fearful of the tenant that he will continue these outbursts and as a result, they fear for their safety.

Cable Box Incident

On April 25, 2013, ER let the cable technician into the building to do some service work. The technician asked for a key to the cable utility box as he had forgotten his key. ER then opened the cable utility box and the technician disconnected one of the cable boxes. ER was then told that this box belonged to the tenant and was being disconnected because he had not paid the cable bill.

The following morning the tenant attended the office and aggressively demanded \$40.00 from ER for the fact that his cable had been disconnected. The tenant stated that because ER had allowed him into the building and his cable had been cut off, it was her fault. The tenant then stated that by allowing the technician in, she had violated a notice that was posited in the entry way of the building which states that tenants should not allow visitors who they do not know into the building.

ER explained that this applied to tenants only and that management is allowed to let in technician and repair personnel. The tenant pointed his finger and argued with ER for a period of time during which ER feared that his aggressions may escalate into violence. The tenant was asked to leave but he refused to and ER went into the office. The tenant then followed her, kicked the door with his foot and pushed the door with his arm forcing the door open while ER's arm was hanging outside stating "I have a fucking right to be here"

FO then called the RCMP as he was refusing to leave the front office. The RCMP advised the tenant that his dispute regarding the cable disconnection should be taken up with the cable company and not with the building management.

False Allegations of Theft

FO testified that he received a call from the RCMP on June 7, 2013 due to an allegation of theft made by the tenant against him. The RCMP explained that there was no evidence to support this allegation and as a result no further action was taken. FO testified that these allegations were malicious attempts to sabotage his reputation and thus making it difficult for him to work and perform his duties in the building.

False Allegations of Rape

In a sworn affidavit of one of the tenants residing in the building, referred to as JM, she states that the tenant attended the common room on June 7, 2013 waiving a piece of paper claiming that it was going to help get FO out of the building. The tenant told JM that FO had master keys to the residents' rooms and that he had given a guy a key who used it to get into one of the rooms where ~~he~~ the guy raped a woman while she slept.

JM was so shocked, on hearing this allegation from the tenant, she went back to her room and feared for her safety and that she too may be a victim of ~~FO~~ rape. However, she spoke to FO and ER about this the next day who both reassured her that this was not true. The tenant ~~had also made the same allegation to~~ also told another resident of the building, (MG) who provided a sworn affidavit to this effect, that a women had been raped in the building.

The landlord submits that the tenant has engaged in several incidents whereby he has caused distressed and fear to other tenants as well as the landlords.

The tenant's lawyer stated that the tenant resides in a government funded building whereby they have a mandate to deal with mentally and medically challenged tenants and that there is a certain level of tolerance that needs to be provided by the landlord, such as not to instigate or incite disturbances in the building. A copy of this mandate was provided as evidence which states that the building will serve the residents by responding to their needs and promoting an atmosphere of community co-operation and team spirit.

The tenant's lawyer contended that if these incidents were of such a serious nature why were they not addressed with the tenant in writing at the time and therefore the lack of this action reflected the low level of severity involved.

The tenant testified that he had made the theft allegations to the police but these were based on a genuine belief that FO had stolen something from his apartment. The tenant's lawyer also stated that no police action was taken and therefore there was minimal impact on the tenant.

The tenant testified that FO has 'had it in for him' since he started as he had been completing duties for the building manager before FO took over, which were subsequently cancelled by FO . The tenant's lawyer stated that FO had incited the tenant and that the building management could have used a third party buffer person to communicate with the tenant rather than engaging with the tenant directly.

In regards to the first incident in January, 2013, the tenant testified that he was angry about the fact that FO wanted to do another inspection and that he did confront FO and ER about this but did not verbally abuse them in the manner that was described. The tenant also denied talking to JM about the allegations of rape.

The tenant's advocate (referred to as TL) testified that she had tried to make efforts in the form of written communications with management to provide a communication portal through which both parties could resolve previous disputes, such as the tenant having pets and illegal entries into residential units by the landlord. The tenant provided a number of documents as evidence which show that the landlord and his legal representatives went back and forth with numerous letters with the tenant's representatives, attempting to resolve these previous disputes. TL stated that as a result of this, the relationship of the landlord with the tenant was strained and the landlord engaged in a course of action that became antagonistic.

The landlord's lawyer stated that the building is independent living and that the tenant should not be residing in the unit if he requires professional care which the building cannot provide.

Analysis

The notice to end tenancy was issued to the tenant in the correct form and contents as required by the *Residential Tenancy Act* and was served and received by the tenant on June 24, 2013. As a result, I find that the tenant disputed the notice within the time limits afforded under the *Act*.

In my analysis of all the evidence provided for this case, I find that, based on the testimony of FO and the corroborating evidence in the form of sworn affidavits from witnesses, the tenant has engaged in a course of behavior that was abusive, aggressive and threatening.

In the first incident presented by the landlord's lawyer, the tenant was served a legal valid notice of entry and shut his door after receiving it. I find that, by the tenant going back out to confront FO, when he simply could have addressed his concerns in writing directly to the landlord or via his advocate, caused FO and SM distress and trauma which was documented in their affidavits. Furthermore, the tenant then followed FO and SM to the office where he continued his abusive questioning of the landlord as well as another staff member, until the police arrived to calm him down.

While this tenancy required a specific type and level of care to residents of the building including the tenant, it is unreasonable to accept that for this reason the landlords should be required to increase their level of tolerance to abusive behaviour as supported by the evidence provided. Furthermore, the copy of the building mandate requires the landlords to work with residents' needs, but in the same document it also states that the landlord is required to maintain the building in a safe, healthy and effective way. Therefore, I find this application was made for this purpose.

In addition, I also find that the tenant caused a significant disturbance in the foyer as a result of the visit by the cable repair technician. Again, the tenant's frustrations and concerns could have been addressed with the landlord in writing, as had been done in the past, but instead the tenant decided to confront staff directly causing them to fear for their safety, so much so that the police had to be called. I accept the evidence of the witnesses to this incident based on the police report which states that the tenant was given the same information on resolution, namely that his dispute should be with the cable company and not with the management team.

Based on the evidence provided by the tenant, I find that while the tenant's representatives tried to work diligently with the landlord to provide resolution, in the same exchange of letters provided as evidence, the landlord repeatedly warned of the tenant's aggressive behaviour referring to the crime-free housing addendums and specifically warning against additional outbursts after the inspection notice incident of January 10, 2013 in a letter dated on January 16, 2013.

In making my decision in this case, I have not considered any of the evidence relating to the allegations made to the police by the tenant. This is because any person has the right to make a criminal allegation if they have a genuine belief or evidence to support

this. In this case there was not sufficient evidence that the tenant did not have a genuine belief that FO was responsible for the thefts, be it that the tenant based this solely on the fact that FO had a master key to the building.

However, I do accept the sworn documentary evidence of the tenant, JM and MG, that the tenant made the rape allegations, over the evidence of the tenant who denied this. I find that this not only affected JM and MG, who are residents of the building but it also adversely affected the landlord in his working relationship with the building residents.

As a result, I accept the evidence provided by the landlords and find that the tenant's cumulative actions caused significant interference with the landlord. Therefore, the landlords are entitled to an order of possession effective 2 days after service on the tenant as the date on the notice to end tenancy has now passed.

Conclusion

Based on the above reasons, the tenant's application is dismissed without leave to re-apply.

As a result, I hereby grant an order of possession in favour of the landlords effective 2 days after service on the tenant. This order may then be filed and enforced in the Supreme Court as an order of that court.

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 13, 2013

Residential Tenancy Branch

