



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Widsten Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, MT

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and for more time to apply to set aside a Notice to End Tenancy.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present oral evidence, to ask relevant questions, and to make submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch on October 08, 2013. The Agent for the Landlord stated that these documents could not be served on the Tenant as the Tenant no longer lives at the rental unit and has not provided a forwarding address. As the documents were not served to the Tenant they were not accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch on September 16, 2013. The Tenant stated that he served these documents to the Landlord, via email, although he cannot recall the date of service. The Agent for the Landlord stated that these documents were not received. As the Landlord did not acknowledge receipt of these documents and the Tenant submitted no evidence to show that they were received by the Landlord, the documents were not accepted as evidence for these proceedings.

The Tenant submitted that he faxed 7 documents to the Residential Tenancy Branch on October 16, 2013, although I did not have those documents before me at the time of the hearing, although it was located prior to rendering this decision. The Tenant stated that he served these documents to the Landlord, via email, to the Landlord on October 21, 2013. The Agent for the Landlord acknowledged receipt of these documents on October 21, 2013. As the documents were served well outside the timelines established by the Residential Tenancy Branch Rules of Procedure, these documents were not accepted as evidence for these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside and should the Tenant be granted more time to make this application?

Background and Evidence

The Landlord and the Tenant agree this tenancy began on July 01, 2013 and that it was a fixed term tenancy, the fixed term of which ends on December 31, 2013; that the Tenant and a female were named on the tenancy agreement; that the Tenant and a female signed the tenancy agreement; and that the tenancy agreement requires the Tenant to pay rent of \$600.00 by the first day of each month.

The Landlord stated that a One Month Notice to End Tenancy for Cause was posted on the door on August 29, 2013 and that on August 30, 2013 the female Tenant acknowledged that she received the Notice, via email. The parties agree that the Notice to End Tenancy required the Tenant to vacate the rental unit on September 30, 2013 and that the reason noted for ending the tenancy on the Notice was that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The evidence shows that the Tenant filed an application to dispute the notice on September 09, 2013. As the application was filed in accordance with section 47(4) of the *Act*, there is no need to consider the Tenant's application for more time to apply to set aside the Notice to End Tenancy.

The Landlord wishes to end this tenancy, in part, because a neighbour who lives across the street from this residential complex alleges he has been disturbed on numerous occasions by the Tenant looking through his windows. The Agent for the Landlord stated that the neighbour reported that the Tenant sometimes stands in his driveway and stares in his windows; that he sometimes stands on his front steps and stares in the windows; and that he sometimes stands across the street and stares in his windows. The Agent for the Landlord stated that the neighbour lives in a single family dwelling that is not a part of the Tenant's residential complex.

The Tenant stated that he has had a personal relationship with this neighbour; that he has been on the neighbour's property, by invitation; that the neighbour got mad at him, although he does not know why; that he does not peer or stare into the neighbour's windows; that he does not do anything the neighbour should consider "creepy"; and that he does not know why the neighbour would make these allegations.

The Landlord wishes to end this tenancy, in part, because the Tenant has allegedly interfered with the caretaker on numerous occasions. The Agent for the Landlord stated that the Tenant has unplugged the electrical cord when the caretaker was mowing the lawn. The Tenant stated that he has never unplugged an electrical cord when the

caretaker was mowing the lawn. The Agent for the Landlord declined the opportunity to call the caretaker as a witness.

The Agent for the Landlord stated that the Tenant has turned off the sprinkler when the caretaker was watering the lawn. The Tenant stated that he did turn off the sprinkler on one occasion, simply because he believed the caretaker had mistakenly left the sprinkler running.

The Landlord and the Tenant agree that the Tenant was provided with a warning letter regarding the aforementioned incidents on August 22, 2013; that he was advised to have no further contact with the neighbour; and that he was advised not to interfere with the caretaker.

The Agent for the Landlord stated that after the warning letter was served the Tenant was constantly “badgering” the caretaker about the complaints that were being made about him. The Tenant stated that he was not “badgering” the caretaker, he simply wanted to learn some details about the complaint so he could attempt to resolve the issues.

The Agent for the Landlord stated that the Landlord has received several verbal complaints from occupants of the residential complex, who describe the Tenant’s behaviour as “odd”. He was unable to provide any specifics of those complaints.

The Landlord and the Tenant agree that the female Tenant provided the Landlord with a letter, dated September 05, 2013, in which she informed the Landlord that she would vacate the property and that she gives the Landlord permission to change the locks and to dispose of property left in the unit after September 30, 2013. The Landlord contends that this letter provides him with the right to possess the rental unit.

The Tenant stated that he did not know the letter dated September 05, 2013 was being provided to the Landlord and that he returned his keys to the Landlord on September 30, 2013 and that he removed all of his personal property, as he did not understand he could stay in the rental unit until after this hearing. At the hearing the Tenant clearly stated that he wished to continue to reside in the rental unit, given that he believes he is obligated to pay rent until the end of the fixed term of the tenancy agreement.

The Landlord and the Tenant agree that the Tenant has paid rent for October. The Landlord stated that he may seek compensation for lost revenue from November if a new tenant is not located prior to that date.

Analysis

Section 47(1)(d)(i) of the *Act* authorizes a landlord to end a tenancy if a tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant of the residential property or the landlord of the residential property.

On the basis of the undisputed evidence, I find that the neighbour who alleges being disturbed by the Tenant resides in a single family dwelling on the opposite side of the street from the residential complex. As this individual is not an occupant of the residential complex, I find that the Landlord does not have the right to end this tenancy on the basis of this individual being disturbed.

I find that the Landlord has submitted insufficient evidence to show that the Tenant has unplugged an electrical cord when the caretaker was mowing the lawn. In reaching this conclusion I was heavily influenced by the testimony of the Tenant, who denies the allegation, and the absence of any testimony or documentary evidence from the caretaker. Although the allegation is referred to in a warning letter sent to the Tenant, this letter was not written by the caretaker and cannot be considered direct evidence. I therefore find that the Landlord does not have the right to end this tenancy on the basis of this allegation.

On the basis of the undisputed evidence, I find that the Tenant has turned off the sprinkler on at least one occasion. I note that the Tenant provided a reasonable explanation for this action. In the absence of direct evidence that refutes the Tenant's testimony that this has only occurred on one occasion or that he has turned it off after being asked not to, I cannot conclude that this constitutes a significant interference or an unreasonable disturbance.

Without more specific details about the nature and the number of interactions between the Tenant and the caretaker in regards to warning letter the Tenant received, I find that the Landlord has failed to establish that the Landlord has grounds to end this tenancy for this reason. I find it reasonable for a tenant to make inquiries about an alleged complaint, particularly if it is for the purpose of rectifying the problem.

Without more specific details about the Tenant's behaviour that other occupants of the residential complex allegedly find "odd", I find that the Landlord has failed to establish that the Landlord has grounds to end this tenancy because of alleged "odd" behaviour.

Even when all of these issues are considered in their totality, I find that there are insufficient grounds to end this tenancy.

I specifically note that the issue of whether or not this tenancy has ended was not an issue in dispute at these proceedings and I have not, therefore, made a determination on that matter. The Tenant retains the right to file another Application for Dispute Resolution seeking an Order of Possession for the rental unit if the parties cannot mutually agree to settle this matter.

Conclusion

As I have determined that the Landlord has failed to establish grounds to end this tenancy, I grant the Tenant's application to set aside the One Month Notice to End

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: October 23, 2013

Residential Tenancy Branch