



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding More Than A Roof Mennonite Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, O

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy for Cause - Section 47;
2. A Monetary Order for compensation – Section 67; and
3. Other.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on May 15, 2010. Rent of \$461.00 is payable monthly. On August 15, 2013 the Landlord served the Tenant with a one month notice to end tenancy for cause (the “Notice”). The Notice lists the following reasons:

The tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord;

- Seriously jeopardized the health, safety or lawful right of another occupant or the landlord.

The Landlord states that on August 5, 2013 the Tenant bullied another tenant's child by yelling at a child, calling him a thief and forcing the child to pick up and return a toy to the Tenant's yard. The Landlord states that the next day the Tenant threatened the child's parent by calling her unfit and saying that the parent would be reported. The Landlord provided a copy of the parent's report of the incidents. It is noted that this report does not indicate any yelling or swearing by the Tenant. The Landlord provided a copy of an incident report in relation to the Tenant attending the management about whether a complaint had been made about the August 2013 incident. It is noted that this report does not indicate any yelling or swearing by the Tenant.

The Landlord states that this is a consistent pattern of behavior that when someone complains the Tenant will confront the person complaining by yelling and swearing. The Landlord referred to previous incidents since February 2012. The Landlord states that the threat to report another person for being an unfit parent is inappropriate and in this case has triggered the parent's own foster experience and that this threat seriously jeopardized the parent's health by causing stress.

The Tenant states that in August 2012 she did not yell at the child but spoke calmly and quietly to inform the child that it was wrong to steal and to return the toy to the yard. The Tenant states that she did speak sternly and did ask the child where its mother was. The Tenant states that the child, approximately 6 years old, was alone without parental supervision and that the child's mother was not anywhere around. The Tenant states that she has frequently seen the children by themselves and that the Tenant did report the parent.

The Tenant's Witness, states that she is a neighbour and acquaintance of the Tenant and that she does not socialize with the Tenant. The Witness states that her and her

husband were both outside their unit on the day of the incident with the child and that the Tenant was not heard to yell at the child. The Witness states that during the incident, the child's parent was not seen around the area. The Witness confirms the events as stated by the Tenant and states that the Tenant was speaking in a straightforward manner and that the child initially lied to the Tenant about the taking of the toy.

The Tenant states that the Landlord has been harassing the Tenant consistently about personal matters of the Tenant such as who the Tenant associates or is friends with. The Tenant states that on one occasion the Landlord accused her of smoking marihuana solely on the basis of seeing the Tenant sit beside some young persons who were smoking marihuana. The Tenant states that she feels like she is being constantly watched and that the Landlord will even make comments to the Tenant when she smokes outside the unit. The Tenant states that on one occasion the Landlord confronted the Tenant over a drinking charge that the Tenant states she has never gotten. The Tenant states that she only receives a traffic ticket. The Tenant states that on one occasion after her child had been hit by a third party and the Tenant wrote a letter of complaint to the Landlord, the only action taken by the Landlord was to send the Tenant a mutual agreement to end the tenancy. The Tenant provided a letter from her physician in relation to the stress caused by the Landlord's actions. The Tenant claims \$1,000.00 in aggravated damages for harassment.

The Landlord states that the Tenant's claim of harassment is unfounded "in the extreme". The Landlord states that they received no information about the Tenant's child being cut. The Landlord states that the Tenant was offered a mutual agreement due to the number of previous incidents and to give the Tenant an option. The Tenant's Advocate states that the Landlord earlier informed the Advocate that the Tenant has been given the mutual agreement as the Tenant did not attend another tenant's baby shower. The Landlord states that this was in relation to a huge upset where the Tenant cancelled a shower. The Landlord states that they have had conversations with other tenants and that letters given to the Tenant were methods to

create an opportunity for dialogue. The Landlord states that at no time has the Landlord witnessed anything involving the Tenant.

The Tenant states that on Friday June 7, 2013 the fridge door broke and was unable to close causing the food in the fridge to freeze and spoil. The Tenant states that she informed the Landlord immediately but that the fridge was not repaired until the following Wednesday June 12, 2013. The Tenant states that she obtained some food supplies from the food bank and that the Landlord compensated the Tenant with two \$10.00 gift cards. The Tenant states that the value of the food lost was \$80.00 and claims \$60.00 in compensation.

The Landlord states that the fridge door was damaged by the Tenant's child and was temporarily repaired with tape. The Landlord states that the Tenant was not home over the week-end, that Wednesday was the earliest their repair person could attend and that no other repair person was sought. The Landlord they went over the Tenant's list of lost food items and priced each one out and that the total amounted to the \$20.00 provided to the Tenant. The Tenant states that the glue on the tape wore off quickly and that she was home all week-end.

The Tenant states that she is on a wait list for an alternate rental unit and will be ending the tenancy with the Landlord as soon as one comes available. The Tenant states that is it unknown when the next rental unit will become available but it may take a couple of months.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid.

Given the direct evidence of the Witness and the Tenant, in relation to an incident in August 2013 with a child, I find that Tenant did not behave or speak in a significantly unreasonable or disturbing manner in relation to the child. While a parent may not appreciate their child being educated about theft from a neighbour, I also do not find that a single incident of such communication with a child to be a significant or unreasonable disturbance. Although the Landlord describes this and the incident following involving the child's parent as following a consistent pattern of yelling and swearing, I note that the parent only describes the Tenant's voice as going "up an octave" and no mention is made of swearing. I also note that the incident report by management makes no mention of yelling or swearing by the Tenant. Although the report indicates that the management felt threatened by the Tenant's persistence, I do not find such persistence to obtain answers to be a significant or unreasonable disturbance of the Landlord, considering the Landlord's equal obligations in relation to their tenants.

Noting that in some circumstances involving children, a person has a legal requirement to make a report to an authority, and as there is no evidence that the Tenant has abused or otherwise misused a lawful right to make a report to an authority, I find on a balance of probabilities that the Landlord has not established that the Tenant's statements to the parent in relation to making a report has seriously jeopardized the health, safety or lawful right of another occupant or the landlord

As the Landlord argues that the incidents in August 2013 follows a consistent pattern of behavior and as no behavior from this incident has been found to be significantly or unreasonable, and considering that no action was taken by the Landlord in relation to the previous incidents, I find that the previous incidents are of little weight in making a determination that the Notice is not valid. I find that the Tenant is entitled to a cancellation of the Notice and the tenancy continues.

Harassment is defined as persistent threatening or tormenting behavior. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming

costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Aggravated damages are awarded where compensation is necessary to take into account distress and humiliation or other serious injury and not to penalize the offending party.

I note that while the Landlord pursues the right to end the tenancy, letters are given as evidence of the Tenant's behavior however in defence of the Landlord's actions the same letters are described as an "opportunity for dialogue". I also note that no evidence was provided by the Landlord that any of the other tenants were given such opportunities or mutual agreements to end their tenancies when in conflict with the Tenant. Overall it appears to me that the Landlord is acting in a biased manner against the Tenant. While I accept that the Tenant feels harassed by this behavior, I do not find the incidents of exchange between the Landlord and the Tenant to be persistent. I do find the Landlord's behavior, particularly in relation to the incident in August 2013 and in relation to the Tenant's child to be unreasonable and tormenting to the Tenant and as a result, I find that the Tenant has substantiated an entitlement to a portion of the compensation claimed in the amount of **\$200.00**. Given the medical evidence, I find that the Tenant is also entitled to additional amount of **\$200.00** for aggravated damages.

Section 32 of the Act provides that a landlord must maintain a unit in a state of repair that make is suitable for occupation by a tenant. Based on undisputed evidence that the fridge was not repaired for nearly a week, that the Landlord did not seek out earlier repair options and considering that a fridge is necessary for suitable occupation, I find that the Tenant has substantiated that the Landlord failed to act reasonably and is therefore entitled to compensation for the loss of the use of a fridge and the loss of food in that fridge in the reasonable amount of **\$60.00**.

As the tenancy will end as soon as another unit comes available and as there is no time that has been identified for the availability of such a unit, I provide the Tenant with a monetary order for the entitlement. Should the tenancy continue into the next rental period and the tenancy has not ended, the Tenant may deduct any portion of the monetary order from rent payable.

Conclusion

The Notice is cancelled and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$460.00**. If necessary, this order may be filed in the Small Claims Court and enforced 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: October 07, 2013

Residential Tenancy Branch