



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WS BERNARD INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT, OLC, O

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy, for more time to make the application, for the Landlord to comply with the Act, regulations or tenancy agreement and for other considerations.

The Tenant's Advocate said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on October 5, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

During the Conference Call the Tenant's Advocate said the application for more time and for the Landlord to comply with the Act was directed at the first Notice to End Tenancy dated September 4, 2013 which did not have a page 2 of the Notice included. That issue has been corrected by the new Notice dated September 27, 2013. Therefore these two items are no longer relevant.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?
2. What other considerations are there?

Background and Evidence

This tenancy started on February 1, 2009 as a one year tenancy and renewed on a month to month basis. Rent is \$675.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$325.00 in January, 2009.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated September 27, 2013 by posting it on the door of the Tenant's rental unit on September 28, 2013. The Effective Vacancy Date on the Notice is October 31, 2013. The Tenant is living in the unit and the Landlord said he wants to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenant has significantly interfered with or disturbed the Landlord or other tenants, seriously jeopardizing health or safety of other occupants, putting the landlord property at significant risk and has breached a material term of the tenancy agreement.

The Landlord said there were several incidents that lead to the issuing of the 1 Month Notice to End Tenancy and they are as follows:

- 1). The Landlord said on September 27, 2013 the Tenant closed the garage door on another tenants car, causing damage to the car and the garage door.
- 2). The Landlord said he has provided 3 written warning Notices to the Tenant about the Tenant's behaviour. The Notices are dated February 16, 2011, July 3, 2012 and September 3, 2011. The Notices are all about noise violations and aggressive behaviour towards other tenants. The February 16, 2011 is about the Tenant knocking on the neighbouring tenant's wall late at night. The July, 2012 and September, 2011 notices are about yelling and aggressive language used by the Tenant to other tenants in the renal complex.
- 3). The Landlord also submitted 4 letters of complaint about the Tenant from other tenants. These letters are date August, 2009, July, 2012, June 11, 2013 and one is not dated. The Landlord said the names have been blocked out on the Tenants copies as the other tenants are afraid of the Tenant.
- 4). The Landlord said that the letter of August 11, 2009 says the Tenant was heard saying she will burn the place down. This Letter is not signed and does not identify who sent it.
- 5). The Landlord said he has also provided a letter from himself outlining the garage door incident. As well the Landlord said that the Tenant denied him entry to check the fire alarms.
- 6). There is also a letter from the owner of the property to the property manager requesting the Property Manager to talk to the Tenant about noise and yelling. This letter is dated May 19, 2011.

The Landlord also provided a witness Mrs. C. the Landlord's wife who said that the Tenant was noisy and did not get along with some of the other tenants. The Witness said that she has tried to work with the Tenant, but her behaviour has not changed and she has caused noise disturbances.

The Tenant said the Landlord's claims are untrue and she made the following statements regarding each of the points the Landlord made:

- 1). The Tenant said she did not close the garage door on another tenant's car. The Tenant said she was going to let her friend out of the garage when another tenant came into the garage. When she saw the other tenant coming she pressed the garage door button to open the door and the other tenant pressed his button as well and the door closed by accident. The Tenant provided a witness D.D who confirmed the Tenants account of the incident and the witness said the Landlord was not there so he did not see what actually happened. The Witness said the Tenant did not close the garage door on the other tenant's car on purpose and the door closed by accident or by a result of both tenants pushing the door buttons at the same time.
- 2). The Tenant did not response to the written warning notices.
- 3). The Tenant advocate said the letters from other tenants are not signed or identified and this is problematic as the Tenant cannot respond to incidents that are not correctly identified. The Tenant said she is not loud and she does not yell or scream. As well the Tenant said she is 68 years old, 5 foot tall and in poor health so she is surprised that anyone would be afraid of her.
- 4). The Tenant said she did say that she would like to burn the place down, but she said she was talking to herself and it was only an expression as she was feeling unhappy that day because she does not like living in an apartment. The Tenant said she would not and has never thought about actually burning the place down.
- 5). The Tenant continued to say the Property Manager has harassed her and the Property manger was not in the garage when the garage door incident happened so he does not have any firsthand knowledge of the incident. As well the Tenant said the Landlord came at 9:00 am to check the fire alarms when the Entry Notice said the checks would be between 11:00 am and 4:00pm. The Tenant said she was in the bathroom when the Landlord came to check the alarms and she told him to come back later. The Landlord said he was early and he did not come back later as the Fire Marshall left the building around 9:30 am.

The Landlord said if the Tenant's application is unsuccessful he is requesting an Order of Possession to support the 1 Month Notice to End Tenancy with an effective vacancy date of October 31, 2013.

The Tenant's Advocate said the Tenant will need until November 30, 2013 to move out if her application is unsuccessful.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord. The Landlord has requested to end the tenancy as he believes the Tenant's behaviour is serious enough to warrant an eviction. The Tenant said the Landlord's claims are not true and she does not cause noise and is not aggressive to other tenants. Consequently the parties will abide by the following decision. In Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at **significant** risk.

The letters the Landlord submitted from the other tenants had the authors names blocked out on the Tenant's copies so the Tenant could not properly defend herself as she may not know the incident that the other tenants were referring to, because the other tenants were not identified. Consequently I accept the Tenant's testimony and I dismiss the other tenants' letters that were not identified.

The warning Notices from the Landlord do show behaviour issues with the Tenant are significant, but these incidents were from February and September, 2011 and July 2012. The warning Notices are stale now and do not warrant an eviction.

With respect to the garage door incident it is not clear if this was a premeditated act by the Tenant or an accident or if the other tenant triggered the door to close; therefore I find the Landlord has not established grounds to prove the Tenant endangered another tenant or the Landlord's property.

Further the Landlord said the Tenant is uncooperative as the Tenant did not give him access to check the fire alarms. I accept the Tenant's testimony that the Landlord came at the wrong time which was inconvenient for the Tenant, but she would have given the Landlord access during the times on the Entry Notice.

In this case it is my finding that the reasons given for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47(d) of the Residential Tenancy Act. I find in favour of the Tenant and Order the 1 Month Notice to End Tenancy for Cause date September 27, 2013 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated September 27, 2013 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

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 29, 2013

Residential Tenancy Branch