



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC, CNR, MNDC, OLC, LRE, PSF, O, DRI, RR

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated October 3, 2013 and a Ten Day Notice to End Tenancy for Unpaid Rent dated September 30, 2013. The tenant was also seeking a monetary order, an order to force the landlord to comply with the Act, an order to restrict the landlord's access, an order that the landlord provide services and facilities required by law, a rent abatement and to dispute an excessive rent increase.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Matter 1: Evidence

This hearing is being held on November 14, 2013. The tenant made the application for Dispute Resolution on October 4, 2013 and submitted evidence in support of his application a month later on November 7, 2013. The tenant's evidence consisted of 92 pages and two DVD discs.

The landlord testified that, because they only received the tenant's evidence package on Sunday November 10, 2013, the day before the statutory holiday, the landlord was not able to submit their response to the tenant's submission and still meet the statutory deadline under the Act. The landlord pointed out that they also do not have the technical equipment to view the tenant's digital evidence contained on the 2 DVD's.

The tenant stated that the landlord was avoiding service of the evidence and refused to respond when the tenant attempted to deliver the evidence package. The tenant pointed out that the evidence was served 5 days before the hearing, as required under the Act and Rules of Procedure. The tenant also argued that most of the documents he submitted were already in the landlord's possession as they consisted of letters to and from the landlord, copies of the landlord's Notices and copies of previous decisions. The tenant disputed the landlord's claim that they did not have the equipment to view the tenant's DVDs.

Residential Tenancy Rules of Procedure, require that all evidence must be served on the respondent. Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed, or if that is not possible, at least (5) days before the dispute resolution proceeding.

The "*Definitions*" portion of the Rules of Procedure states that when the number of days is qualified by the term "**at least**" then the first and last days must be excluded, and if served on a business, it must be served on the previous business day. Weekends or holidays are excluded in the calculation of days for evidence being served on the Residential Tenancy Branch.

I find that, the tenant's evidence was served to the RTB before the deadline. However, I find that the tenant failed to serve the evidence on the landlord at least 5 days prior to the hearing. I further find that the tenant's delay in serving evidence that was available at the time the tenant applied for dispute resolution, caused the situation in which the landlord was disadvantaged by not being given sufficient time to respond and still meet the statutory deadline for evidence. Accordingly, the tenant's documentary evidence and DVDs were excluded from consideration. However, the tenant was permitted to give verbal testimony with respect to this evidence and the landlord was granted the opportunity to respond verbally.

Rule 4 states that, if the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents or other evidence the respondent intends to rely upon must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding but if the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

The landlord testified that they immediately submitted their own late evidence rebutting the tenant's evidence. However, the landlord's evidence was not found on file and also will not be considered. The landlord's verbal testimony was heard.

Preliminary Matter 2 – Severing Part of Tenant's Application:

I find that the primary issue to be dealt with in the tenant's application is to determine whether or not this tenancy will continue. I find that the tenant's dispute of the One Month Notice to End Tenancy for Cause and the 10-Day Notice to End Tenancy for Unpaid Rent are the most pressing issues that must be determined without delay.

With respect to the portion of the tenant's application relating to the monetary claim, and other requests for orders, I find that these matters are separate and apart from making a determination of whether the One Month Notice to End Tenancy for Cause and 10-Day Notice to End Tenancy for Unpaid Rent should be cancelled.

Pursuant to Rule 2.3 of the Dispute Resolution Proceedings Rules of Procedure, if the Dispute Resolution Officer determines that it is appropriate to do so, in the course of the dispute resolution proceeding, they may dismiss unrelated disputes contained in a single application.

I find that the tenant's monetary claims, and requests for other orders, are matters that must be severed from the main dispute and require a separate application and hearing. Therefore, I dismiss these portions of the tenant's application with leave to reapply if the tenant still intends to pursue these other matters. I will proceed to hear and determine the portion of the tenant's application regarding the Notices to End tenancy.

Preliminary Matter 3 – Previous Hearings and Decisions

There have been five previous hearings between these parties and several earlier Notices to End Tenancy for Cause have been cancelled at the tenant's request. Monetary compensation has also been granted to the tenant in the past. In the most recent decision for the hearing held June 18, 2013, the One Month Notice to End Tenancy for Cause dated May 7, 2013 was cancelled, the tenant was awarded nominal compensation and the landlord was cautioned that:

“if he continues to issue notices to end the tenancy without merit, the landlord may be found to be in breach of the Act and the tenant may apply for compensation for loss of quiet enjoyment.”

I find that the issue before me today relates, in part, to a One Month Notice to End Tenancy for Cause issued on October 3, 2013. Given that this is a new Notice and does not relate to previous matters, I will not be basing my determination on issues or

events already ruled-upon in previous hearings. May 7, 2013 is the date the previous 1Month Notice was issued. I will accept evidence and testimony with respect to the current One-Month Notice dated October 3, 2013, and allegations raised relating to the tenant's conduct, or alleged violations of the Act or Agreement, upon which the latest Notice is based. I will also make a determination on the validity of the 10-Day Notice to End Tenancy for Unpaid Rent issued on September 30, 2013.

Issue(s) to be Decided

The remaining issues to be determined are:

- Should the One Month Notice to End Tenancy for Cause be cancelled?, and
- Should 10-Day Notice to End Tenancy for Unpaid Rent be cancelled?

Background and Evidence:

The tenancy began on June 1, 2012. The current rent is \$500.00 and a security deposit of \$250.00 was paid.

The tenant submitted into evidence a copy of a Ten Day Notice to End Tenancy for Unpaid Rent dated September 30, 2013 and copies of two One-Month Notices to End Tenancy for Cause, one dated September 3, 2013 and the other dated October 3, 2013.

Although the Ten Day Notice to End Tenancy for Unpaid Rent indicated that the tenant was in rental arrears for \$550.00 as of September 30, 2012, the landlord's testimony contradicted this and it was not clear what amount of arrears were genuinely owed nor over what period these arrears were accrued. The tenant believes that this Notice should be cancelled.

In regard to the One Month Notices for Cause, the landlord's agent testified that, after the first One-Month Notice to End Tenancy for Cause was served on the tenant on September 3, 2013, they realized that the tenant's last name was misspelled and later issued the second One-Month Notice to End Tenancy for Cause on October 3, 2013. The Notice indicated that:

- the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- the tenant seriously jeopardized the health, safety or lawful right of others, and
- the tenant put the landlord's property at significant risk.
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

The landlord's agent testified that the One Month Notice was issued because the tenant engaged in disruptive conduct that bothered other residents and caused them to fear the tenant.

Both the tenant and the landlord acknowledged that the tenant is not often on the premises and only resides in the unit for a few days every month. The tenant testified that he mostly lives with his girlfriend at another address and she appeared as the tenant's witness and supported this fact.

According to the landlord's agent, on the occasions when the tenant returns to the complex, he is sometimes in an inebriated state and acts in a hostile, confrontational manner, picking fights, using abusive language and has been known to physically interfere with other residents living in the home.

The landlord's agent testified that the tenant has come home late at night on more than one occasion in a drunken state during which he deliberately made noise to awaken others by yelling, banging on doors and causing a disturbance. The landlord's agent testified that complaints have been received from the other residents and police have been called on several occasions. According to the landlord, there are concerns that the tenant's behaviour will escalate to violence.

The tenant argued that the landlord's testimony about him being drunk and boisterous is pure fabrication. The tenant stated that police have never charged him and in fact, they assisted him when the landlord's agent and others were bothering him.

The landlord's agent testified that the tenant makes it a practice of pushing a camera into people's faces baiting them by saying that he is recording their actions and comments.

The tenant admitted that he does make it a practice to record conversations and interactions with the landlord's agent and others. The tenant pointed out that this was done for self protection to ensure that he is not undermined by false allegations.

The landlord's agent testified that there have been incidents of theft with respect to the mail and it is suspected that the tenant may have been involved. The landlord testified that problems with mail tampering have necessitated locking the area to protect the resident's mail from being taken.

The tenant denied that he had tampered with mail and accused the landlord and others of confiscating *his* mail and sending it back. The tenant testified that locking up the mail area, is a violation of the law and the tenant intends to report this to the authorities.

The landlord's agent pointed out that the tenant frequently makes vexatious complaints that have no valid basis. The agent stated that, for example, the tenant has lodged complaints that his room was not adequately heated, while at the same time the tenant persists in leaving the windows open, despite the landlord's instructions to ensure that the windows were kept closed to preserve heat.

The tenant countered this allegation by stating that he has the right to open his windows as he sees fit and nobody is entitled to tell him what to do with regard to his own windows.

The tenant pointed out that, most of his complaints in the past have been found to be valid and were accepted as fact in other Dispute Resolution hearing decisions rendered in his favour prior to this one.

The landlord's agent stated that the owner is in ill health and has specifically directed all renters to deal with his agent. The landlord's agent testified that the owner also stated that he does not want any contact whatsoever with this particular tenant because he feels that the stress of dealing with the tenant adversely affects his health. However, according to the agent, the tenant has ignored the direction and still persists in communicating directly with the owner, instead of the landlord's agent.

The landlord's agent stated that, he always tries to be polite and respectful to all the residents, including the tenant, but this tenant has repeatedly displayed an antagonistic attitude towards him. The landlord's agent recounted one incident in March 2013, in which the tenant, without provocation, verbally confronted him and his girlfriend as they were trying to prepare food in the kitchen late one evening. According to the landlord's agent, the tenant began to make hostile comments scolding them for using the kitchen so late.

The tenant acknowledged that this incident did occur, but stated that it was the landlord's agent who became hostile and swore at him. The tenant testified that that, in response to the tenant's comment about use of the kitchen, the landlord had menacingly told him to *"fuck off while you still can"*. The tenant testified that he

perceived this comment to be a threat. The tenant stated that he documented this event by camera and also sent a letter of complaint describing what occurred directly to the owner.

The landlord's agent presented a witness who testified that she was present during the kitchen incident. This resident testified that it was the tenant who interfered with them verbally, without provocation, acting in an aggressive manner. The witness testified that the tenant approached them to chide them for using the kitchen. The witness stated that she felt the tenant was trying to engage them in an argument.

The witness testified that she has personally been subjected to insults from the tenant, including being cursed at and enduring derogatory racial slurs about her ethnicity. When asked to provide specific details, the witness stated that the tenant has called her several foul names and has even physically accosted her in the past. The witness testified that she fears this tenant and she avoids being in his proximity whenever possible, which is difficult, given that they share the kitchen and common areas in the home.

The tenant denied ever saying these things to the witness.

The witness testified that, in the past, she caught the tenant stealing some of her food, which the tenant denied.

The witness and the landlord's agent testified that the tenant had also left spoiled food in his cupboard that was attracting vermin. According to the witness, in July 2013, the landlord asked the witness to discard some perishables left to rot in the cupboard, in the interest of the health and hygiene of the other residents. The witness stated that, although she was nervous about possible reprisals from the tenant, she did clean up the mess because the infestation problem would put everyone's food at risk.

The tenant denied that he had left any spoiled food in his cupboard and pointed out that he only kept non-perishable dry goods in his cupboard. The tenant alleged that the owner and the witness had purposely discarded his supplies because the landlord was clearly intent on evicting the tenant. The tenant stated that he wrote a letter of complaint directly to the owner about his cupboard being raided and the contents taken.

The witness stated that the tenant had also sabotaged her cable connection by hooking up wires to her cable box, destroying it in the process, and threading the wires up the exterior of the building through drilled holes in the wall to his room. The witness stated that she contacted the cable provider and they had to send a technician out to disconnect the illegal cable extension and replace the witnesses broken cable box.

The tenant denied that he had ever stolen the witness' cable service or tampered with the cable service of anyone else living in the complex. The tenant pointed out that he had purchased his own cable/internet from a completely different supplier. In fact, the tenant stated that the landlord and other residents had intentionally cut off *his personal* internet and cable services in April 2013. The tenant testified that he filmed the landlord's agent cutting the wires and also wrote a letter of complaint to the owner about this incident.

The landlord acknowledged that, in the past, this tenant had genuinely been subjected to unacceptable treatment by some of the other former residents in the rental complex. However, according to the landlord, action was taken against these individuals and they are no longer living there, nor are they permitted on the premises. The landlord testified that, nonetheless, the unacceptable conduct of this tenant unfairly disturbs others and the landlord's position is that the other resident's rights to quiet enjoyment under the Act must be protected as well.

The landlord's agent testified that some of the renters are disabled and vulnerable and feel intimidated by the tenant, especially having seen or heard him during one of his drunken tirades. The landlord feels that the tenant's request to cancel the One Month Notice to End Tenancy for Cause must be dismissed and the landlord is seeking an Order of Possession based on the Notice dated October 3, 2013.

Analysis:

Ten Day Notice to End Tenancy for Unpaid Rent

With respect to the tenant's request to cancel the Ten Day Notice to End Tenancy for Unpaid Rent, I find that this Notice must be cancelled because the basis for the amount being claimed as rental arrears is not sufficiently clear.

Accordingly, I grant the tenant's request and hereby order that the Ten Day Notice to End Tenancy for Unpaid Rent dated September 30, 2013 is dismissed and of no force nor effect.

One-Month Notice to End Tenancy for Cause

With respect to the evidence put forth to support the One-Month Notice to End Tenancy for Cause,

I find that the tenant is not prepared to assume any responsibility for causing or contributing to the persistent acrimony in the complex nor the ongoing complaints received by the landlord from other renters. I find that the tenant has taken the position that he is merely an innocent party targeted by others.

I find that the disruptions in the household have recurred and appear to be escalating since May 7, 2013 and I note that, even after the One-Month Notice to End Tenancy for Cause was issued on October 3, 2013, the tenant was reported causing a disturbance that bothered more than one other occupant on October 4, 2013 by coming in late and purposely making noise. I accept the landlord's agent's and the witness' testimony that this occurred and that some residents avoid the tenant by remaining in their rooms when he is on site because they do not feel safe.

I find that each of the minor incidents that were put forth, such as being accused of taking other resident's food or allegedly leaving spoiled goods in the cupboard, if taken in isolation, would not likely suffice to justify a termination of this tenancy. However, the accumulation of numerous incidents over time, do display a course of inappropriate and disruptive behaviour that is likely to have significantly interfered with or unreasonably disturbed other occupants, or the landlord of the residential property.

I also find that some of the alleged transgressions, *if true*, are quite serious in that they contributed to a climate of discomfort, if not fear, in this household. The tampering with another resident's cable service or coming in late causing a ruckus while intoxicated, are occurrences that, if accepted as true, would each constitute sufficient cause to justify termination of this tenancy.

I am prepared to accept the witness' testimony that the tenant did interfere with her cable service. That being said, in order to permit the tenant to respond properly to this serious allegation, I requested that the tenant submit a copy of his final cable/internet bill showing his own account at the subject address. I allowed the tenant 7 days after this hearing to submit the additional evidence. If the tenant's verbal testimony that he had his own service can be verified with documentary evidence, this would establish, on a balance of probabilities that the tenant would not likely have had any reason to intercept the cable of another resident.

The tenant protested against my request for proof on the basis that, according to the tenant, the issue of alleged cable and internet sabotage was already dealt with during a previous hearing. However, I have determined that no findings were ever made on this subject in prior decisions.

Although the tenant has since discontinued his subscription to his internet service at that address, he did agree to obtain a copy of his final cable/internet bill and submit it into evidence to support his testimony.

The decision was held in abeyance for one week to permit the tenant to furnish this important evidence.

On November 20, 2013, I received the tenant's response to my request to provide proof of his own cable/internet account from April of this year. The tenant did not submit the records, but submitted a statement that he was not able to obtain a copy of his final cable or internet invoice from the provider, Shaw, as they don't keep records that old. The tenant testified that he had already discarded his own copies of these records since April 2013. Therefore, the tenant could not prove that any such account existed in his name.

However, the landlord's agent also submitted additional evidence comprised of a printed statement from the same service provider showing the history of an account, on company letterhead, covering the period from March 21, 2013 to October 18, 2013. The account is for the dispute address and is in the name of another resident in the complex, not the tenant's name.

Based on the preponderance of evidence, I find, as a fact, that the conduct of the tenant significantly interfered with or unreasonably disturbed other occupant s as well as the landlord of the residential property. For this reason I find that the One Month Notice to End Tenancy for Cause will not be cancelled and I must dismiss the tenant's application to cancel the Notice.

During the hearing the Landlord made a request for an order of possession. Under the provisions of section 55(1)(a), upon the request of a Landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy. Accordingly, I so order.

However, the effective date on the One Month Notice to End Tenancy for Cause is shown as November 3, 2013.

Section 53 (3) provides that, In the case of a notice to end a tenancy, if the effective date stated in the Notice is any day other than the day before the day rent is due, then the effective date is deemed to be the day before the day in the month that rent is payable under the tenancy agreement that complies with the required notice period.

Accordingly, I find that the effective date for the Order of Possession will be changed to November 30, 2013.

I hereby issue an Order of Possession in favour of the landlord effective November 30, 2013 at 1:00 p.m. This Order must be served on the Applicant tenant and may be enforced by the Supreme Court if necessary.

Conclusion

The tenant is not successful in the application and the request to cancel the One Month Notice to End Tenancy for Cause is dismissed. The landlord is granted an Order of Possession at the landlord's request.

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: November 20, 2013

Residential Tenancy Branch