



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a 10 Day Notice for unpaid rent and for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to have the 10 Day Notice to End Tenancy set aside?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?

Background and Evidence

The parties agree that this month to month tenancy started on November 03, 2011. Rent for this unit is \$650.00 per month and is due on the 3rd day of each month. The landlord testifies that there was a written tenancy agreement in place. The tenant testifies that this was a verbal agreement and the landlord simply wrote something down on an envelope at the start of the tenancy. No tenancy agreement has been provided in evidence.

The landlord testifies that the tenant was served with a 10 Day Notice to End Tenancy on October 08, 2013. This was posted on the door of the rental unit on this date. The Notice informed the tenant that he owed rent of \$650.00 that was due on October 01, 2013. The Notice informs the tenant that he has five days to either pay the outstanding rent or dispute the Notice or the tenancy will end on October 18, 2013.

The landlord testifies that the tenant also owes an amount for gas but the landlord is unsure how much this is and agrees it has not been documented on the 10 Day Notice.

The landlord agrees the tenant did send the landlord a cheque for the rent but the landlord testifies that she wants the tenant out of the unit so the landlord has not cashed the cheque.

The tenant testifies that due to problems with the landlord the tenant sent the rent cheque by registered mail to the landlord on October 04, 2013. The tenant has provided a Canada Post tracking document which shows this was received by the landlord on October 09, 2013. The tenant testifies that he filed his application to cancel the Notice on October 11, 2013.

The tenant testifies that the landlord has entered the tenants unit without notice. The tenant testifies that on weekends he has to go into a correctional facility to serve a weekend sentence. The landlord is aware of this and has entered the tenant's unit during this time. The tenant testifies that he has a hidden camera set up and discovered that the landlord was entering his unit after the tenant had found things tampered with in his unit. The tenant has not provided evidence of this camera. The tenant testifies that he has had to put a chain lock on the outside of his door to prevent the landlord entering whenever the tenant is not home.

The tenant testifies that the landlord also comes banging on the tenant's door wanting a heater. This banging is persistent and the tenant has recorded it and provided evidence of this. The tenant testifies that the landlord has been going down to speak to the tenant's probation officer which is an invasion of the tenant's privacy. The tenant

testifies that the landlord calls his phone and leaves messages at all hours sometimes as late as midnight. The landlord has also called the tenant's mother and left messages that fill up his mother's answering phone and cause distress to his mother. The tenant has provided audio CD's of these messages. One of the messages has a threatening tone in which the landlord refers to her husband being a corrections officer and having the tenant beaten up while the tenant is incarcerated.

The tenant testifies that the landlord will come and bang on the tenant's door and peer through his window. The tenant has now had to hang a curtain to prevent the landlord looking into his unit and this takes away the tenant's only daylight to the window which is a loft above the landlord's garage.

The tenant testifies that concerning utilities; at one time the landlord did provide some utility bills but these had a different address and the landlord's husband's name on them. The tenant contacted Fortis gas and was told that he should not pay them unless they refer to his address.

The tenant seeks to have the Notice to End Tenancy cancelled as rent was paid within the five allowable days. The tenant also seeks an Order for the landlord to provide written Notice to enter the tenants unit and to respect the tenant's right to quiet enjoyment of his rental unit.

The landlord testifies that she did enter the tenant's unit after she saw a heater close to the tenant's bed. The landlord testifies that she was told she could enter the unit as the heater posed a fire hazard. The landlord testifies that she saw this heater when she stood at the tenant's door and she has entered twice to determine that the heater is not a fire hazard. One time was with a witness.

The landlord disputes calling the tenant many times; the landlord testifies that she did call the tenant's mother to try to get her to help by talking some sense into the tenant. The landlord testifies that her husband is a retired corrections officer and the landlord disputes threatening the tenant. The landlord agrees that she has called the tenant at

midnight as she can see that the tenant must be awake as his lights are still on. The landlord agrees she did knock on the tenant's door when she was trying to give the tenant the Notice to End Tenancy.

The parties presented other evidence that was not relevant to my decision. I looked at the evidence that was relevant and based my decision on this.

Analysis

The relationship between the parties is acrimonious. The landlord was more intent on arguing with the tenant during the hearing and was insistent on presenting testimony that had no bearing on the tenant's claim. The landlord was cautioned about her constant interruptions during the hearing.

With regard to the tenant's application to cancel the 10 Day Notice to End Tenancy; section 46 (4)(a) of the *Act* states that within 5 days after receiving a Notice under this section, the tenant may pay the overdue rent, in which case the Notice has no effect.

The Notice was posted to the tenant's door on October 08, 2013 and is therefore deemed to have been served three days after it was posted on October 11, 2013. The tenant therefore had until October 16, 2013 to pay the outstanding rent. The tenant did send a cheque to the landlord which was received on October 09, 2013. Whether or not the landlord decides to cash this cheque the tenant is still deemed to have paid it. Consequently, as the rent was paid within the five allowable days the Notice no longer has any affect and is therefore set aside.

With regard to the tenant's claim for an Order for the landlord to comply with the *Act*, I will deal first with the landlord's entry of the rental unit without legal or proper notice. The landlord agrees that she has entered the tenant's unit while the tenant was away on at least two occasions. The landlord testifies that this was because the landlord was worried about a heater placed close to the tenant's bed and the potential fire hazard this presented. The landlord has provided no evidence to support her claim that there was a

heater turned on close to the bed that would warrant the landlord entering the tenant's unit under the guise of an emergency; consequently, I uphold the tenant's application for an Order for the landlord to comply with the Act. **I HEREBY ORDER the landlord** to ensure proper Notice is given to the tenant before entry to the rental unit pursuant to section 29 of the Act which states:

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

If the landlord fails to comply with this Order the tenant is at liberty to file an application for compensation and for an Order to suspend or set conditions on the landlord's right to enter the unit or to allow a tenant to change the locks to the rental unit.

With regard to the tenant's claim for an Order for the landlord to comply with the *Act* with regard to protecting the tenants right to quiet enjoyment of his rental unit;. Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

I find the tenant's evidence that the landlord has disturbed the tenant and the tenant's mother by making phone calls and leaving messages more credible. While most of the audio recordings are none threatening there is one that refers to threats against the tenant and one made after midnight. I also find the tenant's evidence more credible that the landlord has bothered the tenant's probation officer by going to their office and this is an invasion of the tenant's privacy. Whether or not the tenant is under a Probation Officer is not the business of the landlord and the landlord has no right to speak to this Probation Officer unless approached by the Probation Officer for information about the tenant.

A landlord must conduct herself in accordance to the *Act* and ensure the tenant can enjoy his rental unit free from harassment by phone calls, extending knocking on the door and harassment of others associated with the tenant. The tenant is also entitled to live in the rental unit free from threats against his person by the landlord. The landlord continually refers to her age as being a 77 or 78 year old woman however the age of a person has no bearing on their demeanor when dealing with others particularly if the other party is a tenant of that person. I therefore find the landlord has been unreasonably disturbing the tenant with these calls and messages and as such I find in

favour of the tenant's application for an Order for the landlord to comply with the *Act*. I **HEREBY ORDER the landlord** to protect the tenant's right to quiet enjoyment of the rental unit pursuant to section 28 of the *Act*.

If the landlord fails to comply with this Order the tenant is at liberty to file an application for compensation for a loss of quiet enjoyment of the rental unit.

Conclusion

The tenant's application to cancel the 10 Day Notice to End Tenancy is upheld. The Notice is cancelled and the tenancy will continue.

I HEREBY ORDER the landlord to ensure proper Notice is given to the tenant before entering the rental unit pursuant to section 29 of the *Act*.

I HEREBY ORDER the landlord to protect the tenant's right to quiet enjoyment of the rental unit pursuant to section 28 of the *Act*.

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 26, 2013

Residential Tenancy Branch

