



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenants' application to cancel a notice to end tenancy for cause. The male tenant, an advocate for the tenant, an agent for the landlord and a witness for the landlord all participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy began on August 1, 2011. The rental unit is an apartment in a multi-unit building. A resident manager lives onsite in the rental building. The tenancy agreement contains a clause on conduct (clause 17), which states, in part, that the tenant must not disturb, harass or annoy another occupant or the landlord, and if the tenant engages in such conduct the landlord may end the tenancy pursuant to the Act.

On October 24, 2013, the landlord served the tenants with a notice to end tenancy for cause. The notice indicated that the cause for ending the tenancy was that the tenants had breached a material term of the tenancy agreement and had not corrected the breach within a reasonable time after written notice to do so. The tenants had received a breach letter from the landlord on July 4, 2013, in which the landlord wrote that the resident manager advised the landlord that on June 17, 2013, the tenants had exhibited aggressive and intimidating behaviour toward the resident manager. The landlord wrote that this behaviour was totally not acceptable and would not be tolerated, and that any

further behaviour of this type would result in a notice to end tenancy. The landlord also instructed the tenants to carry out all future communications with the resident manager in writing only.

Landlord's Evidence

The landlord's evidence was that the male tenant repeatedly breached clause 17 of their tenancy agreement by harassing and intimidating the resident manager, who is an agent of the landlord and also an occupant of the building. The landlord stated that the first incident occurred on June 17, 2013, when both tenants were waiting for the manager at his office, and when he returned there the male tenant walked up very close to the manager in an intimidating fashion, was face to face and almost touching the manager, and began aggressively asking for a paint code and yelling at the manager. On July 4, 2013 the landlord sent the male tenant a breach letter, as described above.

The landlord then proceeded to describe further incidents where the male tenant harassed and intimidated the resident manager. On August 14, 2013 the resident manager and a fire inspector carried out a fire systems inspection in all suites, and the manager waited in the hall while the inspector entered the tenant's unit. The male tenant was standing in his doorway and began yelling and swearing at the manager. On September 14, 2013 the male tenant came up to within three or four inches of the manager's face and swore at and insulted the manager. Two days later, on September 16, 2013, the male tenant aggressively followed the manager on the rental property, until they would be visible to other people. On October 1, 2013, the tenant again threatened the manager and called him a "shit."

The final incident prior to the issuance of the notice to end tenancy occurred on October 23, 2013. The resident manager stated that he was inside his office and he could see that the male tenant was outside the office. The manager stated that he felt unsafe, especially when alone with the tenant, because of the tenant's language as well as the look in his eyes and face, and his aggressive body language. The manager called another occupant of the building (PF) and asked him to come to the office. PF then accompanied the manager to the elevator. The manager stated that the tenant followed the manager and PF into the elevator, and again got into the manager's face and called him "pathetic" and "a shit." The landlord submitted video evidence from the elevator that shows the tenant entering the elevator with the manager and PF, and the tenant moves directly in front of the manager. There is no audio on the video. The landlord also submitted a written statement from PF, who wrote that in the elevator the tenant pushed his chest against the manager and told him that he was "pathetic" and a "Chinese dog."

In the hearing the landlord orally requested an order of possession, and indicated that they would be willing to set the effective date of the notice as December 31, 2013.

Tenant's Response

The tenant acknowledged that the incidents on June 17, 2013 and October 23, 2013 did occur, but he denied the other incidents took place. In regard to the June 17, 2013 incident, the tenant stated that he had made repeated requests to the landlord regarding paint codes, and he was frustrated that they had not replied. In regard to the October 23, 2013 incident, the tenant stated that he was trying to juggle a lot of stuff for his daughter's upcoming birthday, and the heater was not working in his suite. He went to pick up a repair request form, but it appeared the manager was not available, so the tenant waited outside the office. He then found out that the manager had been inside the office the whole time, and the tenant became frustrated. The tenant stated that PF and the manager began speaking to each other in Chinese, and the tenant understood some of what they were saying because his wife of 20 years is Chinese. The tenant believed that the manager and PF were insulting the tenant in Chinese. The tenant stated that he has been trying to talk to the manager to ask for repairs, but the manager will not accept repairs requests, written or otherwise. The tenant stated that the manager is a very rude individual, and the tenant tried to let him know it's not acceptable.

The tenant's advocate submitted that the notice to end tenancy is not valid. The advocate referred to Residential Tenancy Policy Guideline 8, which indicates as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

The advocate submitted that because the landlord's breach letter of July 17, 2013 did not indicate a time frame in which the tenant was to correct the breach, the landlord could not rely on the cause for ending the tenancy indicated in the notice.

Analysis

I find that the notice to end tenancy is valid. In regard to the submission by the tenant's advocate, I find that the landlord's letter of July 4, 2013, while not strictly complying with Policy Guideline 8, does clearly indicate in writing that the tenant was found to disturb or harass the resident manager, and that such behaviour would not be tolerated. I interpret this letter to inform the tenant that this behaviour must be immediately corrected, and I further find that immediate correction of this behaviour is a reasonable expectation by the landlord.

The tenant acknowledged that he did express his frustration to the resident manager on June 17, 2013 and October 23, 2013. The tenant stated that he tried to let the resident manager know that his rude behaviour was not acceptable. Based on this testimony as well as the evidence of the landlord, including the testimony of the resident manager, the video evidence of the incident in the elevator and the written statement of PF, I find that the tenant did bully and harass the resident manager, after he was warned not to do so. There is no excuse for bullying or harassing a landlord, a landlord's agent or another occupant at any time.

As the notice is valid and the landlord orally requested an order of possession in the hearing, I accordingly grant the landlord an order of possession.

Conclusion

The tenant's application is dismissed.

I grant the landlord an order of possession effective December 31, 2013. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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: December 12, 2013

Residential Tenancy Branch