



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

The tenant applied to cancel a 1 month Notice to end tenancy for cause.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. Both parties confirmed they had ample to review the others evidence submission prior to the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant submitted a memory stick that included a duplicate of all evidence supplied. That digital evidence was not accessed as both parties had paper copies of the submission.

Issue(s) to be Decided

Should the 1 month Notice to end tenancy for cause issued on November 22, 2013 be cancelled?

Background and Evidence

The tenancy commenced in September 2012; rent is due on the 1st day of each month.

The landlord and the tenant agreed that on the morning of November 22, 2013 a 1 month Notice to end tenancy for cause was given to the tenant. The Notice indicated that the tenant was required to vacate the rental unit on January 1, 2014.

The reasons stated for the Notice to end tenancy were that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord and that the tenant has put the landlord's property at significant risk.

The landlord provided a written chronology of events that have occurred since February 2013.

The landlord said that early in 2013 the tenant had written "liar" on notices for work that was to be completed; and that the tenant had agreed he had written on the 2 notices. Windows were being replaced and during this time the tenant removed some drywall within his unit and interfered with the contractor.

Around February or March 2013 another occupant of the building reported that the tenant had been seen standing and peering into her patio area, with a camera in his hand. During this time a contractor sent the landlord an email indicating the tenant was taking pictures of work being completed and getting other occupants upset. The contractor wrote on February 28, 2013 that he had talked with the tenant and told him he could not interfere with repairs. Concerns issued by the tenant in relation to the repairs were then addressed by the contractor and landlord.

The landlord stated that the tenant had used derogatory language with a female occupant of the building. That occupant wrote a July 2, 2013 letter to the landlord, a copy was supplied as evidence. The occupant indicated that the tenant was disrespectful, that he called her a liar and that he acts in an aggressive manner.

In October 2013 repairs to individual stair wells commenced. The tenant did not dispute that he called a health inspector, in relation to concerns of mold that had been exposed. The health inspector indicated that there were no issues requiring attention. The tenant also reported the landlord to BC Housing; they replied that any requirement for permits was not within their jurisdiction.

The tenant then contacted the Municipality of Saanich who ordered the landlord to obtain a permit for work to be completed. The landlord said that the tenant's interference has cost them money and lost time. The landlord said that the permit, while technically required, would not have been necessary if the tenant had not egregiously interfered with their right to complete repairs to the property.

The landlord said that the tenant has been bothering the gardener; that he had been verbally abusing him. The landlord stated that in May or June 2013 the tenant had told their gardener that he did not know what he was doing; the tenant was told not to interfere with the gardener. In an effort to avoid problems with the gardening service, on June 3, 2013 a notice was posted for all occupants, indicating that no trimming of trees or other plants could be completed without prior permission of the board.

A copy of a November 28, 2013 letter from the gardener indicated that over the past few months he had been harassed by the tenant "for a while now on a continuing basis." The gardener indicated that the tenant would take pictures of him or verbally abuse him, by calling him a liar. The gardener said he found this behaviour uncomfortable and inappropriate. The gardener requested a respectful work environment.

The landlord said that when he approached the tenant on November 22, 2013, to hand him the envelope containing the Notice ending tenancy, the tenant cocked his fingers, as if using a gun. The landlord found this behaviour aggressive. In the landlord's written submission the 2nd board member who was present when the Notice ending tenancy was served to the tenant indicated he found the tenant's body language and facial expression disturbing and intimidating. The board member reported this incident to the police. The tenant did not dispute these submissions.

There was no dispute that on November 22, 2013, after the tenant was given the Notice ending tenancy, that he and the maintenance person had contact. The maintenance person said he was cleaning and while working, he was singing and whistling. The tenant approached the maintenance person from behind who asked what the tenant wanted; he then swore at the maintenance person, telling him to "f.....off." After leaving the area, the tenant returned and told the maintenance person to stop whistling. Later that evening the tenant was outside shutting a gate when the tenant yelled "Canada Revenue" at him. The maintenance person believed this was an attempt to intimidate him as he has a small business.

The landlord contacted the police on November 25, 2013, and asked that a file be opened; the landlord was afraid that police contact might cause the tenant's behaviour to escalate.

A copy of a December 6, 2013 email was supplied as evidence. The maintenance person sent the email to the board member and board president, indicating that he had been vacuuming the main hallway, when the tenant came through a door and, as he was leaving he kicked the vacuum. The maintenance person felt threatened.

On December 7, 2013 the maintenance person went to the building to clean up after a wind storm. He was using a vacuum and was startled by the tenant, who approached him and held either a camera or recorder in his face. The tenant was yelling at him. The maintenance person called Saanich police, who attended the next day to speak with the tenant about his behaviour. The maintenance person sent an email to the board members; a copy was supplied as evidence. The email indicated the maintenance person had been intimidated and stressed by the behaviour of the tenant. The board member offered to come to the building to speak with the tenant; the maintenance person wished to talk with the police first.

The board member present at the hearing said that he then received a telephone call from the maintenance person, who was so upset he was in tears. The maintenance person was advised not to go to the building without another person present.

The maintenance person said he has worked at this building for seventeen years and that he has never experienced such interference. The landlord attempts to provide a well maintained building to seniors on low income, but the tenant has put a cloud over

the building. The maintenance person said it had been a pleasant place to work but he is now considering resigning as a result of the intimidation of the tenant.

A letter was submitted by the maintenance person's wife, who indicated she has been the secretary/treasurer for fifteen years. She stated that at the beginning of the tenancy the tenant was happy but he then began confronting trades people, other occupants, and the gardener and has left other occupants feeling unsafe.

The landlord said that they operate the building as a society, with volunteer board members. Board members are frustrated and indicating a desire to resign, as the tenant's behaviour has not improved. The landlord said that numerous verbal warnings have been given to the tenant; asking that he cease "in-your-face" confrontations with the board members, contractors and maintenance people. The landlord has posted notices in common areas, in an attempt to set out rules, but the tenant continues to be abusive toward some tenants, board members and employees.

The tenant denied having intimidated anyone and said that when he received the Notice ending tenancy he did not know the details of the reasons indication on the Notice. He said he had called the Municipality of Saanich, as the landlord was required to obtain a permit for work to be completed on the building. The tenant denied taking photographs of a female tenant. The tenant said that the gardener had used a hedge trimmer that caused damage to another occupant's car. The only contact he had with the gardener was to hand him a note from the car owner, requesting repairs.

In relation to the comments made to the maintenance person on November 22, 2013, the tenant said he went to the board member's door and that the maintenance person was there working. The tenant confirmed that he told the maintenance person to stop whistling and that he told him to "f.....off." He was upset; he had just received the Notice ending tenancy.

The tenant confirmed that on December 6, 2013 he saw the maintenance person using the vacuum. The tenant stated he had told the maintenance person many times that the vacuum was too loud and that he should not use the vacuum as it was an annoyance. The maintenance person could have swept up the leaves and needles. The tenant said that he held up a recorder to the vacuum, and denied that he placed it in the maintenance person's face. The tenant said that the maintenance person seems to be afraid of him and he is not sure why this is so.

The tenant confirmed that the police came to see him in relation to the report made by the landlord; he has not been charged with any offence. The tenant's written submission indicated that he had been told complaints had been made, alleging he was abusive and aggressive. The tenant indicated that these allegations should have been reported to the police so they could be investigated. The tenant stated that management is not responsible for the administration of justice and has no authority, education or training to assess these types of report. The tenant said he had not been asked for his side of the story and finds the allegations frivolous and groundless.

The tenant believes that management want to evict him as he is a “whistle-blower” and inconvenient. The tenant does believe that the gardener is not a professional and has little knowledge of gardening.

The tenant confirmed that after he had called Saanich to report the absence of a permit for work to be completed; he did tell the board member that he was “in big trouble.”

The tenant supplied a significant amount of evidence in relation to repairs that had been completed to the building.

There was no dispute that the tenant had been given written notice in relation to his dog barking, an oil leak from his vehicle and smoking on the property. The landlord confirmed that there were no repeat problems in relation to the dog or smoking, once written warning had been issued to the tenant.

The landlord said that the damage to the property was in relation to the oil leaking onto the parking lot; this formed the significant risk to the landlord’s property.

Analysis

In a case where a tenant has applied to cancel a Notice ending tenancy for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. In reaching this conclusion I placed considerable weight on the absence of any evidence of investigation of reports of alleged incidents leading up to November 22, 2013. I also considered the absence of any evidence supporting the submission that leaking oil had resulted in significant risk to the property.

In consideration of the reasons given on the Notice ending tenancy, I have based on my assessment, in part, on the meaning of the terms upon which the Notice was issued.

I have referenced ***Black’s Law Dictionary, sixth edition***, which defines interfere, in part, as:

“To check; hamper. Hinder; infringe; encroach; trespass; disturb...to enter into, or take part in, the concerns of others.”

I find that the issues described by the landlord in relation to the permit, smoking, the tenant’s dog and leaking oil do not form the basis of what could reasonably be classified

as interference, unreasonable disturbance or placing the landlord's property at significant risk, sufficient to end the tenancy.

There is no doubt that the landlord feels the tenant is inserting himself into matters that are not his business; such as contacting the municipality, the health authority and interfering with staff. However, the frustration experienced by the landlord does not, on the balance of probabilities, indicate significant interference or unreasonable disturbance which has been properly investigated and documented.

I do find, on the balance of probabilities, from the evidence before me that the tenant has failed to follow proper protocol by dealing only with the society board. The tenant should not be contacting contractors or attempting to assume any authority for repairs and maintenance that occurs on the residential property. If the tenant has concerns regarding any issues with his tenancy he should direct those concerns to only the society board, who may then respond as they see fit.

Leading up to November 22, 2013 there was an absence of any investigation of the allegations made by other occupants, the gardener and the maintenance person. No letter of warning was issued nor was any other record of discussion with the tenant created. When ending a tenancy for cause I would expect to see evidence of investigation of concerns and a record of warnings issued; allowing the tenant to address those concerns. The only issues that had been placed in writing were addressed by the tenant and did not reoccur to a degree that would support eviction.

I have considered the letter from the gardener, who was not present to act as a witness for the landlord. The tenant denied any contact with the gardener; outside of 1 occasion where he delivered a letter to the gardener. I found the tone of the gardener's letter believable and credible; he simply wants to be able to work in an environment where he does not have to endure "verbal comments, actions or gestures." On the balance, I find it highly unlikely that the gardener would provide the landlord with this letter in the absence of interference by the tenant. However, there was no evidence of specific events that had occurred, the date of those incidents or any investigation of the allegations made.

It is obvious that the landlord has become frustrated with the tenant and believes that up to November 22, 2013 the tenant's behaviour supported the reasons given on the Notice ending tenancy. However, the landlord has agreed that they failed to issue any letters of warning for those matters that might have been accepted as forming significant interference or an unreasonable disturbance.

Of most concern were the incidents reported by the maintenance person which occurred after the Notice was issued. The Notice ending tenancy had been issued on November 22, 2013; as the result of what the landlord described the cumulative effect of the tenant's behaviour. Within hours of receiving the Notice the tenant admits he told the maintenance person to "F...off."

I must consider the tenant's behaviour up to the time the Notice was issued as forming the basis for possible eviction and I find that the landlord has failed to prove on the balance of probabilities that up to November 22, 2013 the tenant significantly interfered with or unreasonably disturbed the landlord or other occupants. Therefore, on this basis I find that the Notice ending tenancy for cause issued on November 22, 2013 is of no force or effect.

The tenant is now be aware of the landlord's concerns, particularly in relation to contact with trades people, other occupants and staff; the tenant should not be emboldened by the cancellation of the November 22, 2013 Notice. If the landlord believes that there is cause to end this tenancy I find that future assessment of the reasons may include incidents that have occurred previously. Staff has the right to perform their duties free of any interference, which includes the absence of recording devices, cameras, comments or gestures. As with a tenant who may have concerns in relation to a tenancy, a landlord is advised to investigate reports of inappropriate behaviour, to place concerns in writing and to then take any action they then deem necessary.

Therefore, this tenancy will continue until it is ended in accordance with the Act.

Conclusion

The 1 Month Notice ending tenancy for cause issued on November 22, 2013 is of no force and effect. The tenancy will continue until it is ended in accordance with 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: December 31, 2013

Residential Tenancy Branch

