



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This was a hearing with respect to the tenant's application to cancel a one month Notice to End Tenancy for cause. The hearing was conducted by conference call. The tenant called in and participated in the hearing. The landlords participated and were represented by their lawyer. I heard the testimony of the named witnesses.

Issue(s) to be Decided

Should the one month Notice to End Tenancy for cause dated October 31, 2013 be cancelled?

Background and Evidence

The rental unit is an apartment in Surrey. The tenancy began on May 15, 2013 on a month to month basis. Rent in the amount of \$890.00 is payable on the first of each month. On October 31, 2013 the landlord's lawyer, acting as his agent, served the tenant with a one month Notice to End Tenancy for cause. The cause alleged was that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The tenant applied for dispute resolution to dispute the Notice to End Tenancy on November 8, 2013 which was within the time provided pursuant to section 47 (4) of the *Residential Tenancy Act*.

At the hearing the landlord testified as to the grounds for seeking to end the tenancy. He testified that there are four residential rental units above a commercial building in Surrey. The landlord said that all three occupants of the rental property who are neighbours of the tenant have complained about noise and disturbance created by the tenant. He said that one of the other occupants, Ms. M.C. moved out as a result of the tenant's disturbance.

The landlord testified that he received several telephone calls from the tenant on the evening of October 21st. During the first call at around 8:30 P.M. the tenant complained about a problem with her toilet seat. The landlord was unable to understand the tenant; he said that her speech was not coherent and she appeared to be drunk. She called again, just before midnight; she was giggling and laughing, and among other matters claimed that her neighbour, Ms. M.C. was a prostitute and one of her customers was the tenant's dentist whose name she could not remember. The landlord said the conversation continued for 30 minutes, the tenant would not allow the landlord to speak and the call ended abruptly.

The landlord was later informed that on October 22nd the police arrested and detained the tenant for being drunk in public. On October 23rd the landlord attempted to contact the tenant by telephone but she did not answer. The landlord left a note under the tenant's door. Later that day the tenant attended at the landlord's pharmacy to make an appointment to meet the landlord at her apartment the following day, but she called later and cancelled the appointment. She told the landlord that she did not want the occupant, M.C. to see the landlords entering her apartment.

The former occupant, M.C. testified that her problems with the tenant began on the night of October 21, 2013. Her girlfriend, E.H. was at the apartment babysitting her 3 year old son. She said that the tenant was repeatedly sending her text messages and calling her phone. Then the tenant started banging on her apartment door, frightening the baby sitter and the children. The tenant was drunk and continued banging on the door, swearing and yelling in the hallway until 3:00 A.M. The next day, October 22, 2013 there was no disturbance from the tenant. M.C. said that she later found out that the tenant was kept in police custody that evening because she was drunk. M.C. testified that on October 23rd the tenant was drunk and around 6:00 P.M. began banging on her door and slipping strange notes under her door. According to M.C. the tenant was yelling about M.C. and her boyfriend having drugs in the apartment. The tenant was also running around outside in her lingerie, throwing cans of pop at the windows of her apartment. The police attended, apparently called by the tenant.

M.C. said that on October 25 the tenant called her phone all day, played pranks on the phone, made obscene remarks and had some of her female friends make annoying calls. The tenant held a party at the rental unit that evening and continued to annoy and harass M.C. throughout the evening. M.C. called the police when the tenant was banging on her door and walls and appeared to be trying to break into her apartment. When the police arrived, the tenant returned to her apartment and refused to open the door to the police.

M.C. testified that the tenant made up fake advertisements offering M.C.'s services as a prostitute. She said that she started receiving phone calls at all hours of the night from strange men seeking sexual favours. She said the tenant continued to get drunk and then yell and scream, throw objects and bang on her door. M.C. notified the landlord of these occurrences by e-mail. On November 18th she notified the landlord that she was moving out as a consequence of the tenant's behaviour. Ms. E.H. who is M.C.'s friend and baby sitter confirmed M.C. testimony about events on October 21st. M.C. testified that the tenant was routinely drunk at the rental property throughout her tenancy.

The landlord submitted copies of a letter received from the RCMP. The letter was given to the landlord to inform him that since October 22nd the police had made what they considered to be a disproportionate number of calls to deal with disturbances at the rental unit. The original version of the letter given to the landlord was slightly revised after the tenant attended with her father at the RCMP detachment to object to the contents of the letter. As a result of the meeting, certain of the passages in the original form of letter that referred to the tenant as the cause or instigator of disturbances were deleted and a passage that mentioned fabricated evidence was removed from an amended form of letter issued by the RCMP.

The tenant's testimony was diametrically opposed to that given by the landlord and by the former occupant, M.C. The tenant said that M.C. was a prostitute and she was disturbed by people coming and going from M.C.'s apartment, making noise, banging on the wall, talking in loud voices and slamming doors as late as 4:00 A.M. She said she was kept awake on October 18th and 19th. The tenant said that on October 20th she lent her phone to M.C. because M.C. asked to borrow her phone, saying that she forgot her own phone at friends. She said that after she loaned her phone to M.C. she began to receive mysterious telephone calls and text messages asking whether she was available. She said that it was at this point that she realized that M.C. was a prostitute. The tenant said that when she confronted M.C., she admitted that she was a prostitute and told her to mind her own business. The tenant testified that she continued to be disturbed by her neighbour and she was sleep deprived as a result. She said that on October 21, 2013 she took two sleeping pills and had a drink in order to sleep and afterwards she went across the street to the police station. This was the occasion when she was detained by the police for being drunk.

The tenant said she did not meet with the landlord because she was afraid of retaliation from her neighbour. The tenant said that she purchased a new cell phone, but as soon as it was activated she was inundated with call and text messages asking if she was "available". She submitted some poor quality faxed photocopies of what she said were internet advertisements posted by M.C. advertising her services as a prostitute.

M.C. denied that the advertisements were legitimate; she said they had been fabricated by the tenant in order to harass her. She said that she did not borrow the tenant's phone and questioned the likelihood that someone would lend their cell phone to a stranger. She denied that she was a prostitute and noted that there was ample evidence to confirm that she was living in the rental unit with her small child and she was not a drug user, nor was her boyfriend.

Analysis

The tenant's documentary evidence consisting of faxed photocopies of what she claimed were internet advertisements placed by M.C. I did not find the tenant's documents to be conclusive or convincing evidence that M.C. was engaged in prostitution or that she engaged in the disturbing behaviour alleged by the tenant. The supposed internet advertisements could not be verified as concoctions or copies of real postings and were therefore inconclusive. The landlord's direct evidence is that in his telephone conversations with the tenant about the matters in dispute, she exhibited signs of impairment and spoke irrationally. On the evidence presented I find that the tenant was drunk on several occasions, notably when she attended the police station while drunk and was detained overnight. The evidence also showed that the police attended on numerous occasions to deal with disturbances between the tenant and her neighbour. I accept and prefer the evidence of the landlord and M.C. over that of the tenant and I find that the tenant was the principal instigator of the disturbances and that her consumption of alcohol was a significant factor in the disturbances. I note that M.C. moved out of the rental property rather than prolonging the confrontation; this supports the conclusion that she was not the aggressor in these disputes.

I find that the tenant has significantly interfered with or unreasonably disturbed another occupant and the landlord of the residential property and I find that there is sufficient cause to justify the Notice to End Tenancy dated October 31, 2013 that was served to the tenant.

Conclusion

I have found that the landlord had sufficient cause to issue the Notice to End Tenancy and the tenant's application to cancel the Notice to End Tenancy is therefore dismissed without leave to reapply.

Section 55 of the *Residential Tenancy Act* provides as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenant's application to dispute the landlord's Notice to End Tenancy. The landlord made an oral request for an order of possession at the hearing. The Notice to End Tenancy stated that the tenant should move out by December 14th, but, pursuant to section 47 (2) of the *Residential Tenancy Act*, the earliest day that the Notice to End Tenancy can be effective is December 31, 2013; accordingly, pursuant to section 55 I grant the landlord an order for possession effective December 31, 2013, after service upon the tenant. This order may be registered in the Supreme Court 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 24, 2013

Residential Tenancy Branch

