Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

Final Decision

Dispute Codes: CNC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated January 21, 2014.

Both parties were present at the hearing and the landlord also had a witness attend. 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 evidence and testimony provided.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Preliminary Matter: Request for Summons of Police Witness and Records

The respondent landlord made a request in advance of the hearing, pursuant to Rule 7 of the Residential Tenancy Rules of Procedure for a summons to be issued requiring attendance of a police officer at the hearing and for the officer to produce documents.

An interim decision was issued in which it was determined that the request for a summons was to be dealt with as a preliminary issue at the start of this hearing.

However, at the hearing the landlord stated that they needed the police officer to be in attendance at the hearing, and the landlord pointed out that it is obviously too late to have this happen when the request for a summons is only being heard and considered after the hearing has already commenced.

In regard to the need for police attendance, the landlord stated that the police could give some background regarding the police interaction with the tenant.

According to the landlord, the police have had extensive ongoing involvement with the tenant. Both the landlord and the tenant confirmed that a restraining order has been issued by police, and is now in effect, prohibiting contact between the tenant and a third party who does not reside in the complex.

Apparently, according to the landlord, this no-contact order is common knowledge amongst residents in the complex and the police have allegedly asked other residents to call them if they witness the tenant associating with that particular third party who is the subject of the restraining order.

The landlord testified that they need first-hand testimony from the police officer about the nature of the tenant's involvement with police and with the third party, who is not permitted to associate with the tenant by a court order.

The landlord's position is that, in addition to other disruptive conduct reported to the landlord, as detailed below, the knowledge that this tenant is suspected of violating the restraining order imposed by police, is relevant because the awareness of this particular fact has the effect of unreasonably interfering with and significantly disturbing other residents living in the complex.

The resident who complained about being unreasonably disturbed by the tenant appeared at the hearing as a witness. The witness stated that, in regard to the police-related aspect of the situation, they are being subjected to unreasonable disturbance by the fact that the tenant violated the court order by permitting that particular third party to access to the building and his suite. The witness pointed out that this is contrary to the legal no-contact order and they observed this occurring on January 1, 2014 and on January 9, 2014. The witness testified that when he observed the tenant's violation of the court order, he dutifully contacted the police about the matter. According to the witness he was later subjected to reprisals by the tenant, who called him a rat. The witness stated that popcorn was also thrown at his door.

The landlord is adamant that there is a bona fide need for the police officer to be summoned to give testimony providing details at the hearing, in order for the landlord to prove that the tenant has significantly interfered with or unreasonably disturbed another occupant of the residential property by contravening the court order and continuing to associate with the third party. .

In the letter from the respondent landlord to the arbitrator, received prior to the hearing, a subpoena of all police reports and any court orders with regard to the subject address from June 1, 2013 to present was requested.

According to the respondent landlord, this evidence is critical it enable them to substantiate the fact that the applicant tenant is likely to bother the other resident who complained and to "*show the type of character (the tenant) is and how capable he may be to retaliate against the other tenant"* (Reproduced as written)

The respondent landlord stated that the summons will function to allow the police officer to provide detailed verbal testimony about confidential information in police records that is apparently now protected by Freedom of Information and Protection of Privacy Act.

The landlord testified that they already went through the appropriate channels to obtain the documents and finally received some copies of records from police, after appealing the initial decision not to provide the requested records. Copies of the written material released by police are in evidence. However, most of the data on these records had been redacted, (blocked out).

In regard to the landlord's position that the tenant's alleged violation of a no-contact order would qualify as significant interference and unreasonable disturbance, I accept that some individuals, such as the witness, may choose to take note of another resident's activities, and as a result may become perturbed about conduct they find inappropriate or not legal.

However I find that other people's perceptions about the conduct of a tenant, even if proven to be accurate, could not in isolation meet the threshold to qualify as significant interference and unreasonable disturbance, unless the tenant's actions directly affect another resident or the landlord in a tangible way.

In fact, I find that the manner in which a tenant decides to manage their own personal affairs is a topic that falls under section 28 of the Act, which protects each tenant's right to quiet enjoyment including, but not limited to, reasonable privacy.

Therefore, I find that the tenant's relationship and interaction with police and confidential records relating to the same, are strictly the tenant's own business and should only be of limited interest to the landlord in the event that the police matter *directly* involves the landlord or other resident.

In the case before me, I find that the landlord has not submitted adequate support to establish that the confidential police records and the police testimony being sought are specifically relevant to the dispute.

I do not accept that police records are required in order to enable the landlord to confirm the "*the type of character*" the tenant is or reveal his likelihood to engage in conduct that would likely violate the Act. I find that the character of the tenant is not a consideration

under the Act. I find that only the actual conduct of the tenant is relevant and then is restricted to how it specifically bothers or interferes with other residents or the landlord.

Given the above, I find the data in police records relating to this tenant or his associates, is not a relevant consideration on whether to terminate the tenancy based on significant interference and unreasonable disturbance under section 47 of the Act.

I find that the police records, even if they confirm the witness' suspicions, would hold no evidentiary weight with respect to the specific issue of unreasonable disturbance or significant interference of the witness or landlrod.

In addition to the above, I find that the landlord was already granted all of the information that the police were prepared to reveal.

Moreover, I find that issuing a subpoena or summons to compel the attendance of the police officer, would not result in the release of any additional relevant data, because the officer would still be bound by freedom of Information and privacy limitations under other legislation. I find that my jurisdiction under the Act does not extend to ordering the release of protected information covered by other laws.

Finally, I find that some of the information being requested by the landlord is available through other available sources such as Court Services on-line.

For the reasons above, I decline to grant the landlord a summons under Rule 7 of the Residential Tenancy Rules of Procedure.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The tenant submitted into evidence a copy of the One-Month Notice to End Tenancy for Cause dated January 21, 2014 showing an effective date of February 28, 2014.

The landlord testified that that the tenant had significantly interfered with or unreasonably disturbed the landlord of the residential property by allegedly violating a police imposed restraining order by associating with a certain third party who does not reside in the complex, calling another resident a rat and popcorn thrown at a resident''s door by the tenant or his guest..

The landlord's witness, a resident who lives on the same floor, testified that the tenant permitted the individual with the no contact order, to have access to the tenant's rental unit on New Year's Eve while the tenant was out. The witness testified that the tenant

had again been seen with the individual in question on January 9, 2014. The witness testified that police attended on both occasions because the witness contacted them to report that the tenant had been seen in the company of this third party.

The witness stated that on January 9, 2014, the tenant's associate threw popcorn at his door and the tenant was also heard calling him a "*rat*" from outside his door. The witness interpreted this comment as a threat and stated that he fears the tenant.

The tenant acknowledged that he did permit the individual in question to enter his rental unit on New Year's Eve, but since then has refused to allow the associate to visit. The tenant also testified that on January 9, 2014, when this individual showed up asking for some items they had left in the unit, he sent them away and fully complied with the no-contact order.

The tenant stated that he has no knowledge of any popcorn being thrown at the witness' door, nor did he call the witness names.

The tenant pointed out that he is not wanted by police and is not engaging in any illegal activities in, or outside, his suite.

The tenant stated that he is not bothering anyone else, but is merely trying to live his life in peace and does not deserve to have his activities and guests monitored by other residents or reported to the police for no reason.

The tenant stated that he is also tired of being subjected to harassment by the landlord and their repeated attempts to terminate his tenancy without just cause.

The tenant requests that the One Month Notice to End Tenancy for Cause be cancelled.

Analysis

I find that in determining whether a One Month Notice to End Tenancy for Cause, the burden of proof is on the applicant to prove that the Notice is valid and was served on the tenant, and to provide all of the evidence upon which the landlord intends to rely.

In this instance, the landlord provided verbal testimony, and provided a witness who also gave verbal testimony, stating that the tenant was observed contravening a restraining order by being seen in the company of a third party he was not supposed to contact and this had the effect of significantly interfering with and unreasonably disturbing the landlord and a neighbouring resident.

As stated earlier, I find that these alleged incidents and the witness' feelings about the matter, fail to meet the threshold to qualify as significant interference and unreasonable disturbance under the Act.

In regard to the allegations that the tenant made comments loud enough to be heard outside the neighbouring resident's door, calling the resident a "rat" and that popcorn was thrown at the resident's door, I find that the witness' verbal testimony, disputed by the tenant, does not suffice as proof that these incidents occurred, nor that the tenant was responsible.

I find that, in order to terminate the tenancy, the landlord would be required to prove that the tenant has actually committed a violation of the Act or the tenancy agreement. I find that the landlord has not sufficiently met their burden of proof to verify that the tenant committed any violation of the Act.

For the reasons above, I find that the One-Month Notice to End Tenancy for Cause is not sufficiently supported by the evidence. Therefore, based on the evidence weighed on a balance of probabilities, I find it necessary to cancel this One Month Notice.

Although I make no finding that the tenant had ever engaged in the behaviour described by the witness or the landlord, I caution the tenant that, should the tenant confront a resident by yelling or name-calling in future, or should the tenant throw items at another resident's door in future, this behaviour could affect the continuation of his tenancy.

Based on the above, I hereby order that the One-Month Notice to End Tenancy dated January 21, 2014 be cancelled and of no force nor effect.

Conclusion

The tenant is successful in the application to cancel the One-Month Notice to End Tenancy but is issued a caution and both parties are ordered to communicate only in written form.

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: March 25, 2014

Residential Tenancy Branch