



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MNDC, OLC, RP, RR

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy and for a monetary order for compensation. The tenant also applied for an order directing the landlord to comply with the *Act*, make repairs, and reduce rent. Both parties attended the hearing and had opportunity to be heard.

The hearing was conducted in person at the request of the tenant who stated that she had a hearing impediment which did not seem to be the case, during the hearing.

The landlord acknowledged receipt of evidence submitted by the tenant. The landlord stated that he had served the tenant with a copy of his evidence by placing it in her mailbox. The tenant stated that she had not received the evidence. However at the end of the hearing, the tenant handed over the landlord's mail that was put in her mail box by Canada Post.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on January 01, 2014. The rental unit is located on the lower level of the landlord's home. The landlord lives upstairs. On March 17, 2014, the landlord served the tenant with a one-month notice to end tenancy for cause.

The notice to end tenancy alleges that the tenant has significantly interfered with or unreasonably disturbed another occupant, seriously jeopardized the health or safety or lawful right of another occupant, has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant, has put the landlord's property at significant risk and has knowingly given false information to prospective tenant or purchaser of the rental unit.

The landlord stated that the incident that prompted him to serve the notice to end tenancy occurred on March 15, 2014. Prior to that date, the landlord stated that the tenant would have loud conversations on the phone which included foul language and created noise disturbances for him and his family, upstairs. The landlord testified that during the loud conversations, the tenant sounded like she was under the influence of a substance. The landlord did not notify the tenant that her behavior was unacceptable, in the hopes that it would improve.

The landlord stated that shortly after midnight on March 15, 2014, the tenant was having a heated conversation on the phone. The tenant got louder and more belligerent as the conversation continued and was swearing and yelling at the person on the other end. This noise disturbed the landlord and his family. At 12:17 hours, the landlord sent the tenant a text message to let her know that she was disturbing the occupants upstairs. The tenant replied with a phone call around 1:00 am asking why she was not allowed to have a conversation. The landlord explained that the loudness of her conversation was disturbing them and told her that they would discuss it the next morning. The landlord stated that the tenant sounded like she was under the influence of alcohol or drugs.

The landlord stated that later that night, at 1:21 am the tenant sent him two text messages and then started throwing things around inside the suite, banged uncontrollably and yelled profanities. The landlord stated that this behavior upset and scared his wife and children. The landlord and his wife went down to the suite and knocked on the door. The tenant did not respond but sent an email at 2:36am which asked the landlord why he knocked on her door after 1:00am and asked him to explain why he was harassing her.

From then on the relationship between the parties deteriorated and the landlord stated that he called for police intervention out of concern for his safety and that of his family.

The tenant stated that the landlord's dogs bit her twice and she reported the incidents to the SPCA. The landlord argued that his dogs were small dogs and had never bitten any person but in order to protect himself, he stopped letting his dogs out in the back yard.

The landlord filed copies of text messages between the parties. The tenant's messages threaten the landlord with legal action for injuries sustained from the dog bites and from tripping on the landlord's belongings on the patio. The tenant also requests the landlord to stop stomping on the floors which compromises her quiet enjoyment of the rental unit. The tenant stated that the landlord harassed her by knocking on her door after 1:00 am on the night of March 15 and also by complaining about a phone conversation she was having late at night. She also stated that the rental unit was in need of repairs which were not carried out by the landlord.

On March 18, 2014, the tenant provided a list of the required repairs to the landlord and also made this application on that same date. The list includes installing door sweeps, fixing a drawer, blind and screen door. The landlord agreed to fix the blinds by April 10, 2014 and complete the other repairs by April 20, 2014.

The tenant also stated that she was without cable for three days and wants to be compensated for the loss of this facility which is included in her rent but did not provide any information on the quantum of her claim.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged on the notice to end tenancy. This was a very contentious hearing with each party alleging the other was being less than truthful. The parties gave conflicting evidence on several points, making credibility an issue. In considering all the evidence, I find the landlord's evidence more credible and I prefer it to that of the tenant.

Furthermore, I found the landlord to be forthright and credible in his statements which are supported by his documentary evidence while I found the tenant to be misleading when she denied getting the landlord's evidence which was deposited into her mailbox and then provided the landlord's mail to the landlord, which she found in her mailbox.

Based on all the evidence before me, I accept that the tenant behaved in an inappropriate manner on the night of March 15, 2014. Even though the landlord stated that this incident was not the first time that the tenant had caused noise disturbances, the landlord also stated that he had not put the tenant on notice that this behaviour was not acceptable. While I accept that the tenant behaved badly, I find that this is the first incident of this nature, in this tenancy of three months that was brought to the attention of the tenant as being unacceptable behaviour. Since the tenant was not put on notice by way of warning or verbal warnings, I am not satisfied that the actions of the tenant on the night of March 15, 2014, justify bringing this tenancy to an end.

I therefore allow the tenant's application and set aside the landlord's notice to end tenancy dated March 17, 2014. As a result, the tenancy shall continue in accordance with its original terms.

Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. Every tenancy agreement contains an implied covenant of quiet enjoyment.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

In regard to the tenant's monetary claim for harassment, I have reviewed the submissions of both parties and I have formed the opinion that the past three weeks have been very stressful on both parties for different reasons. It is my determination that the parties currently find themselves in a situation which has progressively evolved and for which each has made some contribution to its unfolding. Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant did not provide compelling evidence to support her claim of compensation for disruption, harassment and stress. I therefore dismiss this portion of the tenant's application and claim.

The landlord has been notified of the repairs required to be completed and has agreed to complete them on the dates discussed during the hearing.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue. The remainder of the tenant's application is dismissed.

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 28, 2014

Residential Tenancy Branch

