



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HFBC Housing Foundation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

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 into the hearing and he had his representative call in as a support person during the hearing. The landlord's representative called in on behalf of the landlord; I heard evidence from the named witnesses called by the parties.

Issue(s) to be Decided

Should the one month Notice to End Tenancy dated January 17, 2014 be cancelled?
Is the landlord entitled to an order for possession pursuant to the Notice to End Tenancy as requested?

Background and Evidence

The rental unit is a ground floor apartment in the landlord's subsidized housing complex in Vancouver. The tenancy began in October, 2001. The landlord served the tenant with a one month Notice to End Tenancy for cause dated January 17, 2014. The cause alleged by the Notice is that the tenant has significantly or unreasonably disturbed another occupant or the landlord and that the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after notice to do so. The tenant stated that he was served with the Notice to End Tenancy on January 21, 2014 and filed this application to dispute the Notice to End Tenancy on January 31, 2014.

The landlord's representative testified that the rental property provides subsidized housing for persons who may have mental or physical disabilities or addiction related problems. The landlord's representative said that the units are available to a younger group of individuals; for example, some of the tenants are young women who are receiving treatment for eating disorders. There are other younger occupants who have substance abuse problems.

The landlord testified that the tenant occupies a ground floor apartment in the rental property. There is access to the rental unit through the front door of the rental property, but there is also access to the rental unit through a door that opens onto a commercial lane at the rear of the building. The landlord has given the tenant several written warnings because, throughout his tenancy, but in particular, over the past number of months there have been a large number of people coming to visit the tenant in his rental unit. The landlord has received reports that the tenant's visitors are aggressive and disreputable and they have frightened and disturbed other occupants of the rental property. The landlord's representative said that the tenant has claimed that he provides tax preparation services to people and the individuals coming to the rental unit are his clients. The landlord's representative said that the majority of the tenant's visitors look like street people, not persons who are coming to receive tax services. The landlord believes that the tenant is actually selling drugs out of the rental units and the police have expressed concerns to the landlord about the tenant's activities at the rental property. She noted as well that the tenancy agreement prohibits the use of the rental unit for business purposes.

The landlord gave the tenant a warning letter dated October 28, 2013. In the letter the landlord said:

Over the past several weeks we have had numerous complaints regarding the number of guests coming to your suite. This is causing congestion in the commercial lanes around the building resulting in complaints from the business owners, who have reported it to the police. It also poses a security issue for the tenants.

In the past, you have indicated that you do tax preparation for people. If this is in fact the case, we request that you arrange to meet your clients at some other location away from the building. Section 26 of your lease prohibits you from using any part of your suite for "any business purposes or unlawful activities" (copy enclosed)

There are many vulnerable tenants in that building who need a safe, secure and quiet place to recover from their health issues. This constant "parade" of guests must stop.

THIS IS A WARNING LETTER

If there are any more complaints, your tenancy will be in jeopardy.

The landlord's representative testified that the problem did not abate after the landlord gave the warning letter to the tenant. On December 5, 2013 the landlord gave the tenant another warning letter said to be a final warning letter; it stated in part that:

There is a constant parade of people coming to your suite and other tenants are frightened and disturbed. It is suspected that you are dealing drugs from your apartment and we have notified the police. This building has many vulnerable tenants who need a safe, secure and quiet place where they feel safe.

You are in breach of your Tenancy Agreement by continuing this behaviour.

If our staff observe this behaviour continuing or if we receive one more complaint, you will receive a Notice to End Tenancy for Cause.

The landlord wrote another letter to the tenant on January 10th and said that since the December final warning letter the landlord's representative received a call from the police and more complaints from other tenants. The landlord's representative requested that the tenant come to the landlord's office to: "discuss this matter, prior to issuing a Notice to End Tenancy for Cause."

The landlord's representative said that she wanted to meet with the tenant and at that point she was prepared to offer to have the tenant relocate to another rental unit in a different location without street access, but she said the tenant did not respond to the request for a meeting and since then, there have been other occurrences and additional complaints that have caused the landlord to withdraw the offer to have the tenant relocate.

Mr. B.R. a business owner, who operates a bakery near the rental property, testified on behalf of the landlord. He said that there is a large number of people coming to and from the tenant's rental unit; that gain access to the tenant's unit through the entrance off the back alley; many of them park in his business parking spaces. Mr. B.R. said that the visits are generally brief, lasting only a matter of minutes and the people who come to visit the tenant are not carrying papers and do not appear to be coming to see the tenant about tax matters. Mr. B. R. said that they appear to him to be coming to buy drugs. He said that the tenant's visitors come late at night into the early morning hours and because he operates a bakery he has staff working in the business during these hours. He said that some of his employees who are women or who are small in stature are intimidated by the tenant's visitors. Mr. B.R. said that he has encountered visitors who have been rude and intimidating and he has reported incidents to the police. He said that there have been continuing encounters with the tenant's visitors including occurrences just prior to this hearing.

Mr. M.C., who is the landlord's manager of operations, testified on behalf of the landlord. He said he has received a number of complaints about the tenant and his visitors from other occupants of the rental property who are frightened by the tenant and afraid to come forward at the hearing or by way of written complaint. He has also received complaints from the parents of several young women who are occupants of rental units in the building. They called the week before the hearing to voice concerns because their daughters have been frightened and intimidated by the tenant's guests described as "street people" and drug addicts. Mr. M.C. testified that approximately three weeks before the hearing employees of a carpet company performing work in the building reported to him that there was a homeless man sleeping in the amenity room. Mr. M.C. stated that he believed this individual gained access through the tenant's ground floor rental unit.

An occupant of the rental property, Mr. K. M. testified on behalf of the landlord. He said that he was testifying despite his fears of retaliation from the tenant because the tenant's recent aggressive behaviour directed at him has escalated. Mr. K.M. said that he has been intimidated by the tenant's guests in the past. He described them as street people and drug addicts. Mr. K.M. said that after the tenant was served with a Notice to End Tenancy he has been pressuring K.M. to testify on his behalf in this proceeding. He said that the tenant has threatened and bullied him and has also offered him cash if he will testify at this hearing on the tenant's behalf. K.M. testified that he has known the tenant for some time and the tenant counselled him to see his current physician and told him that he could apply for housing with the landlord, but before this hearing the tenant threatened to cause his eviction and have his medical doctor refuse to treat him if he refused to testify as a witness for the tenant. K.M. said that the tenant has physically bullied and threatened him. He called the police to report the tenant's conduct. The tenant gave him a threatening and defamatory letter before the hearing. On Tuesday before the hearing at 12:30 A.M. the tenant was outside his door yelling at him and demanding to talk to him. Mr. K.M. called 911 because of the tenant's frightening behaviour. The police did not attend at the time of the call because K.M. was secure behind a locked door. Eventually the tenant went away. Later that morning K.M. opened the door and found the letter taped to his door.

A second occupant, Mr. K.A. testified on behalf of the landlord. He said that he was stressed out by the parade of "sketchy people coming to visit the tenant. He described them as "binners" and "dumpster divers". K.A. testified that there was too much traffic of unsavoury people coming to and from the tenant's unit. He said he felt intimidated by the tenant and by his visitors and was fearful of retribution for testifying at this hearing, but he was so concerned about the tenant and his visitors and the impact it is having on the residents of the rental unit that he felt that he had to speak out at this hearing. He asked that the tenant be evicted because he and many others are afraid of the tenant and his many visitors.

I heard evidence from the tenant and three witnesses for the tenant, one of whom, Mr. J.J. was his support person at the hearing and is the tenant's father.

The tenant testified that he is a long term tenant at the rental property. He said that, like other tenants in the building, he also is a person with a disability. The tenant testified that he values his housing and the possibility of being evicted has caused him to become depressed and frightened by the prospect of becoming homeless. The tenant testified that he has taken courses directed at becoming a Certified General Accountant. He testified that he volunteered his services to perform tax preparation work over the Christmas Holidays to residents at a nearby rental property that provides accommodations for tenants who are hard to house. He said that some of these individuals suffer from addictions and other mental disorders. The tenant said that some of his clients turned out to be disruptive and tried to use his bathroom to take drugs. The tenant said that some of his visitors became belligerent when he told them they would have to leave. The tenant said that he had to call the police because of their conduct. The tenant said that when he received a warning letter from the landlord he stopping helping these people and told them he could not help them anymore. The tenant said that he received a second warning letter after the group came back to pick up their tax information.

The tenant testified that he has been a good tenant for many years. He said that some indication of that is shown by the landlord renting units to two people, including Mr. K.M. that the tenant referred to the landlord. The tenant said that he also donated exercise equipment used for a gym in the common room of the rental property. The tenant referred to the testimony of Mr. K.M. He said he tried to convince Mr. K. M. to support him in fighting his eviction, based on their friendship and the assistance he gave to K.M. in the past, but he denied acting in ways that were coercive or intimidating.

Mr. C.D. testified on the tenant's behalf. He said that he is a business owner and has known the tenant for a number of years. The tenant has performed some accounting work for him and he said that he has offered the tenant the use of his business premise is he wants to do accounting work there.

Mr. D. D. testified on behalf of the tenant. He said that he known the tenant for some time and has visited the tenant at the rental unit on a number of occasions. He said that he has never seen any signs of drug use or drug activity when he has visited the tenant. The tenant's father also testified on behalf of the tenant. He noted that the tenant suffered from some significant disabilities and said that the loss of housing would have a devastating effect upon the tenant.

The landlord's representative responded to the tenant's evidence. The landlord's representative said that the problem with a high volume of unsavoury visitors to the tenant's unit has continued unabated. She said that the visitors were not coming during tax season and were very unlikely tax clients. The fact that residents are intimidated by the tenant and his visitors and the fact that he has continued to have this high traffic of disreputable visitors even after several written warnings that he is in breach of his tenancy agreement caused the landlord to request an order for possession ending the tenancy as soon as possible. The landlord's representative said that the tenant's recent attempt to intimidate and coerce a resident to testify on his behalf in this proceeding and additional complaints by and on behalf of residents in the past several weeks has caused the landlord to withdraw a proposal to place the tenant in other accommodation.

Analysis

The tenant has acknowledged that he has had a succession of visitors to his unit who have been disruptive and intimidating towards the occupants as well as neighbours in the vicinity of the rental property. The tenant has said that these events resulted from his innocent attempts to provide help to some marginalized persons living near the rental property; he said that he was merely trying to provide them with some tax preparation assistance. The landlord's representative and witnesses were sceptical of the tenant's evidence; they said that these events did not take place during the usual tax season and the persons visiting the tenant did not have papers with them and did not look like they were visiting him for accounting purposes. I heard evidence that many of the visits complained of lasted only a few minutes and appeared like they involved drug transactions.

The tenant testified during the hearing that in his dealings with Mr. K.M., he did not physically or verbally threaten K.M., but the tenant did not deny that he was outside the tenant's door at 12:30 A.M. and did not provide any reasonable explanation for events that caused Mr. M.K. to be so fearful that he called 911 for emergency police intervention.

I did not find the tenant's testimony concerning the nature and purpose and frequency of the visits and of the nature of the guests coming to and from his rental unit to be convincing. Some of the visits were from "street people" and some were short visits from persons arriving by car and parking in the lane or in the parking area for the neighbouring business. I accept the evidence of the landlord and of its witnesses that the tenant and persons permitted on the property by him have significantly interfered with or unreasonably disturbed other occupants of the rental property. I find that these disturbances have continued despite warnings by the landlord and they include recent incidents when the tenant attempted to coerce and intimidate Mr. M.K. to provide evidence at this hearing on behalf of the tenant. I find that there are ample grounds to

support the one month Notice to End Tenancy dated January 17, 2014 that was served upon the tenant and I dismiss his application to cancel the Notice to End Tenancy without leave to reapply.

Conclusion

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. Pursuant to section 55 I grant the landlord an order for possession effective March 31, 2014 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: March 26, 2014

Residential Tenancy Branch

