



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ESCORT INVESTMENT CO. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC, MNDC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause and for a monetary order for compensation.

This application by the tenant was heard on February 28, 2014 for 66 minutes and adjourned for additional time. The adjourned hearing was conducted on this date April 25, 2014 and continued for 64 minutes. Due to the length of time taken, there was insufficient time to address the tenant's application for compensation in the amount of \$700.00. Accordingly this portion of the tenant's application is dismissed with leave to reapply.

Both parties attended the hearing and had opportunity to be heard. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy started in May 2011. The monthly rent is \$682.00 payable on the first of each month. On January 30, 2014, the landlord served the tenant with a notice to end tenancy for cause.

The reasons for the notice were that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord.

The landlord testified that the tenants are constantly creating noise disturbances by banging on doors, yelling and shouting at others and each other and have a steady stream of visitors to and from their rental unit, late at night and on some occasions in the early hours of the morning. The landlord also stated that he has received complaints from other occupants of the building regarding these noise disturbances and regarding the smell of marijuana that emanates from the tenant's apartment. The landlord added that the male tenant behaves in an extremely aggressive and threatening manner towards other occupants and the manager and uses foul language.

The landlord stated that after several verbal warnings, the tenant was given a warning letter on August 27, 2013. The landlord found that the situation did not improve and served the tenant with a notice to end tenancy for cause on September 27, 2013. The parties went to a dispute resolution hearing on November 14, 2013 and the notice was set aside for insufficient evidence.

On December 22, 2013, an incident took place that involved police intervention. The landlord stated that the male tenant threw a snow ball at the manager. The tenant initially denied throwing snowballs but later admitted that he did throw snowballs but was just having fun and did not throw one at the manager. The tenant argued that the manager was the aggressor when he approached the tenant with a hammer in his hand. The manager agreed that he had a hammer in his hand, but explained that he was on his way to return the hammer to his storage locker when he found the tenant yelling outside. The manager stated that as he tried to talk to the tenant, the tenant threw a snowball at him. The manager called the police.

The tenant filed a witness statement regarding this incident. The witness states that he heard the police advising the tenant to "*move along*" and he heard the tenant tell the officer that the manager "*had been the attacker and all he (the tenant) had done was thrown a snowball*".

On December 23, 2013, the landlord served the tenant with a second warning letter. Following a noise disturbance during the night of February 28, 2014, the landlord served the tenant with a third warning letter dated March 06, 2014.

The landlord also filed several letters of complaint from other occupants of the building. Six of these letters describe the incident on December 22, 2014. The body of the letter is identical in all six letters and the occupants of six units have signed these letters. The other letters are in a standard form supplied by the landlord, but include descriptions of disturbances, the smell of marijuana and yelling by the tenants, in the complainants' own words. The tenant stated that the landlord solicited these letters.

The landlord stated that the manager and his wife are an elderly couple whose safety is jeopardized by having to deal with the tenant's threatening and aggressive behavior. The landlord also stated that some tenants are intimidated by this behavior and have indicated that they will move out if the situation does not improve. The manager and his wife filed statements regarding the tenant's behavior, his actions that disturb the peace, the incident on December 22 and the number of visitors at all hours of the night.

The tenant filed letters of support from tenants that live in apartments 101 and 103 that are located on either side of the dispute rental unit. The letters state that the tenants are quiet, respectful and considerate neighbours. One letter states "*At no time have I ever detected the smell of marijuana coming from their apartment*" The other writer agrees that he has never detected the smell of Marijuana in or coming out of the dispute rental unit.

The tenant pointed out that one of the landlord's witnesses lives several doors down from the dispute rental unit and if he smelt Marijuana smoke, he was not in a position to identify the source as the being the rental unit.

The occupant of apartment 101 also stated that the tenant does not play loud music, does not throw parties and does not have excessive numbers of visitors. The letter goes on to describe an interaction between the tenant and the manager in which he states that the manager was loud and belligerent.

The male tenant filed a statement regarding the snowball incident on December 22, 2013. He states that he was throwing snowballs when the manager, his wife and another tenant came out of the building and the snowball he threw landed "*a good distance away from the three*" The tenant stated that the manager approached him in a threatening manner holding a hammer and an argument ensued. The tenant accused the manager of making false complaints which interrupted the tenant's disability cheques and informed the manager that he was responsible for the cost of wasted food due to an inefficient refrigerator.

The tenant stated that the manager called police and the tenant hoped that the police officer would arrest the manager because he had a hammer in his hand. On the contrary, the police officer told the tenant to return to his residence.

Analysis:

In order to support the notice to end tenancy, the landlord must prove at least one of the reasons for the notice.

Based on the documentary evidence and the verbal testimony of both parties, I find that the tenant was provided with verbal warnings followed by three warning letters and two notices to end tenancy for cause.

In most respects there is vast contrast in the tenant and landlord's testimony and it is obvious that the relationship has progressively deteriorated over the term of the tenancy making resolution of issues, at best, frustrating for both parties.

Regarding the incident on December 22, 2013, the tenant himself and his witness both acknowledge in their statements that the tenant threw a snowball. Both argue that it was not thrown directly at the manager. The manager emphatically stated in his oral testimony and in his written submission that the tenant threw a snowball at him.

Even though the manager agreed that he had a hammer in his hand at the time of the incident, I accept that he just happened to be on his way to return the hammer to storage. The police officer also, by the tenant's admission, asked the tenant to leave the scene and did not arrest or charge the manager with any misconduct.

Based on the written submissions and the oral testimony of all parties, I find that I prefer the landlord's testimony. I find on a balance of probabilities that it is more likely than not that the tenant threw the snowball at the manager thereby jeopardizing the safety and security of the manager. This incident along with the warning letters is sufficient for me to uphold this notice to end tenancy. Even though I find that some of the complaint letters were solicited, there are some letters which describe the disturbances in the complainants' own words. However, even if I do not consider any of the complaint letters, I find that the landlord has proven his reasons for wanting the tenancy to end.

Conclusion

The notice to end tenancy is upheld.

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: February 28, 2014

Residential Tenancy Branch

