



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNC, OPC, MNDC, RP, FF

Introduction

This hearing was scheduled for April 10, 2014 to deal with cross applications. The landlord had applied for an Order of Possession for Cause and breach of an agreement. The tenants had originally filed to request monetary compensation for damage or loss under the Act, regulations or tenancy agreement and repair orders. The tenants subsequently amended their Application to request cancellation of a 1 Month Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing.

Preliminary and Procedural Matters

At the original hearing the tenant testified that he served the original Application for Dispute Resolution, the amended Application, and evidence by giving the documents to the caretaker; however, the tenant acknowledged that some documents were given to the caretaker in person and whereas others were put under the caretaker's door. The landlord confirmed receiving the tenant's original Application but provided conflicting testimony as to whether the tenants' amended Application was received. The landlord took the position that the landlord considered the 1 Month Notice to be undisputed and had not provided evidence in support of the reasons indicated on the 1 Month Notice. I informed the parties that I would consider the 1 Month Notice to be under dispute and I would give the landlord the opportunity to provide evidence to show reasons why the tenancy should end. The hearing was adjourned so as to permit additional submissions of evidence with respect to the 1 Month Notice by both parties.

During the period of adjournment the landlord submitted evidence in support of upholding the 1 Month Notice. No further submissions were received from the tenants.

At the reconvened hearing both parties appeared or were represented and were permitted the opportunity to make relevant submissions and to respond to submissions to the other party. The tenants acknowledged receipt of the landlord's additional evidence submissions and confirmed that they did not provide further submissions in

response to the landlord's evidence. The tenants were given the opportunity to respond to the landlord's evidence verbally during the hearing.

Rule 2.3 of the Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. The tenants indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the request to cancel the 1 Month Notice to End Tenancy. I find the tenants' request for monetary compensation and repair orders not sufficiently related to the matter of determining whether the 1 Month Notice should be upheld or cancelled. Therefore, I have only considered the tenant's request to cancel the 1 Month Notice to End Tenancy and I dismiss the balance of tenants' Application with leave to reapply.

It should be noted that this hearing was very difficult to manage. Although I had dismissed the tenants' monetary claim and request for repair orders, with leave, the tenants made frequent attempts to introduce evidence with respect to these issues. The tenants were given several instructions and reminders to focus their submissions so as to respond to the landlord's allegations against them. Also, the tenants were highly emotional and both parties exhibited difficulty in refraining from interrupting the other party and had to be cautioned several times. Ultimately, the teleconference call ended with all parties still in attendance.

Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?

Background and Evidence

The tenancy commenced March 15, 2013 for a monthly rent of \$750.00 due on the 1st day of every month. The monthly rent was subsequently increased to \$766.00.

On December 27, 2013 the landlord issued a 1 Month Notice to End Tenancy for Cause to the tenants. The tenants filed to dispute that Notice and a hearing was held February 13, 2014. During that hearing the Arbitrator found the 1 Month Notice was invalid since it had not been signed by the landlord. In response to that decision, the landlord issued another 1 Month Notice to End Tenancy for Cause on February 13, 2014 and sent it to the tenants via registered mail. The tenants amended their Application to dispute the 1 Month Notice dated February 13, 2014 within the time limit for doing so.

The 1 Month Notice to End Tenancy for Cause dated February 13, 2014 is signed by the caretaker and has a stated effective date of March 31, 2014. The Notice indicates three reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and,
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit or property.

The landlord submitted that the tenants have significantly interfered with and unreasonably disturbed other occupants of the property by: yelling at or threatening them; banging on walls; knocking on doors asking for empty bottles and cans or cat litter; and, they have been the subject of multiple visits to the property by the police.

The landlord submitted that the tenants' conduct not only significantly interfered with or unreasonably disturbed other occupants, but it is a breach of the term 20 in the tenancy agreement.

The landlord pointed to several complaint letters written by other occupants and numerous breach letters issued to the tenants by the caretaker since shortly after the tenancy began. The landlord pointed out that several other occupants have complained to the landlord but are too fearful to come forward for fear of violence or fighting with the tenants

In addition to disturbing other occupants, the tenants have yelled at and threatened the resident caretaker. The caretaker had documented several negative dealings with the tenants throughout the tenancy and those notes were provided as evidence. In addition, a police report was also submitted into evidence and concerns the caretaker's call to the police on February 18, 2014 that the tenants had threatened to "make revenge" upon receiving the 1 Month Notice issued February 13, 2014.

As a result of the tenants' disturbing behaviour the landlord submitted that other tenants have been vacating the property.

The landlord also submitted that the issuance of the 1 Month Notice and pending hearing have not curbed the tenants' disturbing behaviour. The landlord pointed to two

further disturbances that took place on April 10, 2014 and April 29, 2014 while awaiting this reconvened hearing, both of which involving the police being called.

Finally, the tenants have posted false statements on-line whereby they advise prospective tenants not to rent a unit at the property.

In response to the landlord's submissions, the tenants indicated the complaint letters written by other occupants contained false allegations and the caretaker's written notes and verbal testimony was also false. The tenants took the position that the occupants who wrote letters of complaint were either: told to lie about the tenants by the caretaker; friends with the caretaker, or were responsible for the disturbing behaviour themselves. The caretaker denied influencing other tenants to write letters of complaint.

The tenants denied threatening other occupants or the caretaker. The tenants denied hitting the walls or knocking on doors asking for empty bottles or cans or cat litter. The tenants acknowledged that they suffer from severe financial difficulties and that they have brought empty bottles and cans into the building but deny those cans were solicited from other tenants by knocking on their doors.

The tenants suggested that other tenants are moving out of the building because of the way the caretaker conducts himself. The tenants allege the caretaker threatened the tenant last year. The caretaker denied threatening the tenant.

With respect to more recent incidents, the tenants acknowledge that they were arrested by police. Initially, the tenants were told they were under arrest because of damage caused to the landlord's property but those charges were subsequently dropped. Then, the tenants were told they were being arrested for breach of the peace due to conflicts with the caretaker.

It was undisputed that while waiting for this hearing the tenants have paid rent to the landlord, including the month of June 2014 which the landlord has accepted for use and occupancy only. The landlord was agreeable to obtaining an Order of Possession effective June 30, 2014 in recognition of the payment and to give the tenants time to secure alternative accommodation and/or funding.

The tenants also indicated they wish to move-out but cited their financial circumstances as being a barrier to moving, a lack of good rental references, and because they have a pet. The tenants submitted that an end to this tenancy would result in the tenants being homeless.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice. Where there are multiple reasons indicated on a Notice to End Tenancy, to uphold the Notice the landlord need only prove one of the indicated reasons.

Upon consideration of everything presented to me, I find the landlord has provided a preponderance of evidence to demonstrate that the tenants' conduct has significantly interfered with or unreasonably disturbed other occupants of the property or the landlord. Below, I have summarized the evidence that largely formed the basis for my finding.

- The landlord provided copies of numerous breach letters issued to the tenants starting in April 2013 and continuing through to April 2014. Most of the breach letters describe the breach as being "noise and disturbance to other tenants"; "disorderly, rude or loud conduct" and "breach of peace". The landlord also noted that in several instances the police were called by the caretaker or other occupants to deal with the tenants' behaviour.
- Several complaint letters were submitted to the landlords by tenants of unit 203 starting in May 2013 onwards. The letters of complaint reference several instances where sounds of fighting, yelling and swearing are heard coming from the rental unit. In addition, the occupants of 203 describe instances where the tenants have yelled and swore at the complainants; and, the tenant's cat was forced to use the balcony to urinate and upon complaining to the tenants about this, the tenants responded by wanted money to buy cat litter.
- A letter from the occupants of unit 104 complaining about the tenants asking people for money and sitting in the parking lot of the property waiting for people to throw out empty bottles with their garbage. In another letter the tenants of 104 indicate the tenants had submitted documents to the landlord that involved the occupants of unit 104 and those statements were false.
- Letter from the tenants of unit 101 refer to the tenants' violent verbal outbursts including threats of physical violence and revenge toward the caretaker; as well as, loud outbursts from the tenants while in the rear of the building early in the morning.

- An anonymous letter of complaint which describes the tenants coming to their rental unit door asking them for money, cat foot and empty bottles which makes the occupants uncomfortable.

Furthermore, the tenants had submitted that loud and disturbing behaviour was originating from unit 203; yet, the landlord provided signed statements from tenants of 103, 201, 204, 205, and 206 that the occupants of unit 203 are not too loud or disturbing to them.

Finally, during the hearing I observed the apparent difficulty the tenants have in controlling their emotions and anger toward the caretaker and those that have written letters of complaint. Taking this into consideration, along with the incidents that continue to occur since issuance of the 1 Month Notice, I find it likely that the disturbing behaviour of the tenants will continue. As such, I find it is necessary and appropriate to end this tenancy so as to protect the other occupants right to quiet enjoyment at the property and the caretaker's ability to manage this property without undue interference by the tenants. Therefore, I uphold the 1 Month Notice issued on February 13, 2014.

While I appreciate the dire financial circumstances of the tenants, their financial circumstance is not a basis to cancel the Notice to End Tenancy under the Act. Nor, is the ownership of a pet or lack of rental references.

I find the landlord's request for an Order of Possession effective June 30, 2014 is reasonable in the circumstances before me. Therefore, I provide the landlord with an Order of Possession effective at 1:00 p.m. on June 30, 2014 to serve upon the tenants and enforce if necessary.

The landlord is awarded the filing fee. The landlord may deduct \$50.00 from the tenant's security deposit if the landlord so chooses in order to recover the filing fee from the tenants.

Conclusion

The 1 Month Notice to End Tenancy for Cause issued on February 13, 2014 has been upheld. The landlord has been provided an Order of Possession effective June 30, 2014 to serve and enforce as necessary.

The balance of the tenants' Application for Dispute Resolution was dismissed with leave.

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: June 06, 2014

Residential Tenancy Branch

