



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CONNOUGHT MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On March 25, 2014 a hearing took place to hear the Tenants' Application for Dispute Resolution (the "Application") to cancel two notices to end tenancy for cause.

The notice to end tenancy for repeatedly late payment of rent was dealt with in the original hearing and an Interim Decision was issued to the parties on March 25, 2014 which explained that the Landlords had not met the burden of proof in ending the tenancy for repeatedly late payment of rent.

The original hearing was adjourned to allow time for the Tenants to consider the Landlords' evidence relating to the remainder of the reasons on both notices to end tenancy for cause, which had not been served to the Tenants in accordance with the Rules of Procedure.

The Tenants appeared for the reconvened hearing. The Landlord's agent named on the Application who also represents the company named on the Application appeared for the reconvened hearing along with the owner of the rental suite who employed the company to manage it.

The Tenants confirmed that they were able to consider the Landlord's written evidence submitted for the original hearing and had responded by serving the Landlords and the Residential Tenancy Branch with further written evidence in accordance with the Rules of Procedure. The Landlords confirmed receipt of the Tenants evidence and submitted that they had also provided further written evidence during the interim time between the original and reconvened hearing.

However, as per my Interim Decision, only the Tenants were permitted to submit written evidence prior to this reconvened hearing. As a result, I have not considered any of the written evidence provided by the Landlords after the original hearing but allowed the Landlords to provide verbal testimony in relation to the written evidence submitted.

The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

The remainder of the reasons for ending the tenancy on the first 1 Month Notice to End Tenancy for Cause (the “first Notice”) were: 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, seriously jeopardized the health and safety or lawful right of another occupant or the landlord.

The second 1 Month Notice to End Tenancy for Cause (the “second Notice”) seeks to end the tenancy because the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health and safety or lawful right of another occupant or the landlord.

As a result, has the Tenant established that the first Notice and second Notice (the “notices”) for the above reasons ought to be cancelled?

Background and Evidence

The Landlord’s Agent who is also the property manager (“CH”) testified that from the moment the Tenants took on the tenancy, the male Tenant (“SS”) began a course of action which resulted in verbal abuse which often took the form of multiple swear words and threats directed towards CH whenever CH or her husband (who assists CH in her property management duties) would ask SS to do something related to the tenancy.

CH testified that on the day of move in, SS indicated that he wanted to make changes to his rental suite such as painting the kitchen cupboards. When SS was told by CH that he needed to have permission from the Landlords to do this, SS became verbally abusive and displayed an attitude and insisted that he could make changes to the rental suite as he saw fit and that the rental suite was outdated and was ‘ghetto’.

CH testified that on the day of move in, the Tenants were given permission to use another renter’s parking stall for the purposes of unloading their belongings but were then expected to move their truck into their own space. CH testified that the Tenants did not move their truck for another three days.

On December 6, 2013 CH approached SS about the truck and asked him to move it to his own assigned space. CH testified that SS again became confrontational using abusive language to address her and questioned why she was asking him to remove his truck. CH explained the reasons but SS replied stating that their assigned spot did not work for him and continued to yell and swear at CH.

CH testified that she issued the Tenants with a breach letter regarding the above incident and warned that his behaviour was unacceptable. A copy of the breach letter was provided as evidence for the hearing.

CH then testified that on December 12, 2013 they were shovelling snow and the Tenants' truck bed was sticking out onto the pavement preventing pedestrian access. As a result, CH knocked on the Tenants' door and asked him to move his truck. CH testified that SS became angry and frustrated as a result of her request and again started to verbally abuse her with foul language. CH testified that the Tenants were issued with another breach letter on the same day detailing the incident and warning about his behaviour; this was provided as evidence for the hearing.

CH testified to another incident which occurred on January 8, 2014 during a conversation she was having with SS in the communal area. CH mentioned to SS about the fact that his truck was leaking oil onto the parking stall and causing damage to the floor. CH testified that the moment she mentioned this, SS again became angry and began to yell and swear at her. CH testified that SS continued to shout and swear as he left the area and she asked SS to stop shouting and swearing as this was disturbing other residents. CH testified that at this point SS threatened that he was going to kill her, her husband and her dogs. CH testified that SS had called the police and when the police arrived CH explained the threats made by SS, to the police. However, when the police spoke to witnesses no one would corroborate the events and therefore no police action was taken.

The Landlords provided a witness statement which states that a witness heard a door slamming from inside her rental suite and heard SS having an altercation with CH and her husband and swearing at them. This statement was provided as evidence for this hearing. The Landlord also provided a second witness statement which verified the fact that SS was swearing at CH and that he was going to get her fired.

CH testified that on January 17, 2014, her husband noticed that the Tenants had left a dresser outside of their rental suite. A charity truck was present in the area and so CH's husband knocked on the Tenants' door to see if the charity truck could take away the dresser for them. In a written statement by CH's husband, he writes that SS became

abusive again and slammed the door on him telling him to get off his property. CH's husband's statement goes on to say that SS then came out of his door and challenged him telling him that they were slumlords.

The charity truck driver provided a written statement stating that he had witnessed the altercation and that SS was saying to CH's husband "Come over here and say that to my face" and "You try that with me and you'll see what will happen to you".

As a result of the above incident, the Tenants were again issued with another breach letter on January 22, 2014 which was provided as evidence for this hearing. As a result of these incidents, the Tenants were issued with the first Notice on January 24, 2014.

On February 12 and February 18, 2014, CH again issued the Tenants with another breach letter explaining that they were not allowed to leave garbage outside of their rental suite and that the oil leaking from their truck was still an issue. As a result, the Landlords issued the Tenants with the second Notice on February 21, 2014.

CH testified that on the same day the female Tenant ("BR") approached her and questioned why the second Notice had been issued and testified that BR was recording the conversation. CH testified that her husband could see SS taking pictures of them and threatened her that he was going to have her and her husband both fired. CH called the police but no action was taken as there had not been any threats of violence.

The owner of the property ("KW") testified that the Tenants had been on facebook slandering them by stating that they were bullies and testified that the Tenants had caused criminal damage to the property by gouging walls with swear words which appeared to be similar writing to that of the Tenants.

The Tenants disputed all of the evidence testified to and provided by the Landlords.

BR testified that the incident testified to by CH at the start of the tenancy did not occur and referred to their tenancy agreement which stated that alterations to a rental suite would require written permission. BR testified that they are aware that they cannot make alterations and neither did they have any intentions to do so.

BR testified that she did not receive the first two breach letters CH had submitted and every time a request was made of them they did go ahead and make the correction. SS submitted that the Landlord's evidence is fabricated and that while he agrees that he and the Landlords do not get on, he submitted that CH's husband swears and yells at them whenever conversations are had between them.

SS stated that they have a long box truck and if they park it in a manner where the end will not stick out onto the pavement then this creates a danger for other users with the front part of the truck sticking out and increasing the likelihood of damage to their truck.

In relation to the January 8, 2014 incident, the Tenants provided a statement from the first witness who had also provided a statement for the Landlords. In this statement the witness writes that it was CH's husband who was the aggressor during the incident and used abusive language towards SS. The witness goes on to write that at no time did SS threaten the Landlords and that she felt pressured into signing the Landlord's statement.

The Tenants also provided three other statements from different residents all of which indicate that CH's husband was the aggressor.

BR testified that the second witness statement provided by the Landlords was written by a friend who works for the Landlords and therefore the content of this statement cannot be believed.

BR testified that with regards to the incident on January 17, 2014, SS was simply fed up with the rude way that he was being treated by CH and her husband and while there was an exchange between the parties, which is what the charity truck driver alluded to, no threats were made and it was resolved quickly. BR denied receiving a breach letter about this incident. In support of this, the Tenants provided a witness statement which states that CH's husband was the one who was knocking on the Tenants' door aggressively.

BR testified that on February 21, 2014 she did approach CH but only to ask for an explanation as to why they were being harassed with the Notices. BR testified that CH stated that they felt that the Tenants have a vendetta against them and are out to get them fired because they had complained to higher management.

BR submitted that they have not had any further issues between them and have now bought a new smaller truck. BR testified that they took to facebook to seek legal advice on their situation because they were desperate and denied any damage to property claimed by the Landlords.

Analysis

On examining the first and second Notice, I find that they were served to the Tenants in a manner that complied with the Act. I also find that the Tenants disputed the Notices within the time limits stipulated by the Act.

When a Landlord issues a Tenant with a 1 Month Notice to End Tenancy for the above reasons, the Landlord bears the burden of proof as to why the notice was issued. After examining all of the evidence in this case I find that, while the Landlords have provided evidence to support a case to end the tenancy, the Tenants have also supplied sufficient evidence to dispute the Landlords' evidence. In making my decision as to whether both Notices should be cancelled, I find that the Landlord has failed to meet the burden of proof in this case.

The Landlord failed to provide sufficient corroborating evidence of the incident that occurred at the start of the tenancy and that the Tenants were responsible for the graffiti damage testified to by KW.

The first witness statement provided by the Landlords for the incident on January 8, 2014 was written by a witness who also provided a statement for the Tenants. The details on each statement are contradictory in nature and instead of trying to determine which version fits the facts of this incident, I find that it is more appropriate to dismiss this witness evidence altogether. This then leaves the Landlord's second witness statement which the Tenants claim was written by one of the Landlord's employees. However, the Tenants provided three contradictory statements stating that it was CH's husband who was the aggressor which puts significant doubt on the Landlord's evidence.

I also place important emphasis on the fact that none of the witnesses alluded to by both parties were made available for the hearing, including CH's husband who seems to be a critical component to the issues testified to and the charity truck driver who could have provided independent testimony. As these statements were disputed by both parties, without having these witnesses present their evidence in testimony and the ability to question and cross examine the witnesses in this case, I find that this undermines the evidentiary value of these statements in making a decision in this case.

I find that it would have been more prudent for the Landlord's to have provided other corroborating evidence such as audio and video recordings or photographs to verify the incidents alluded to during the hearing. Therefore, in the absence of reliable corroborative evidence from either party, the remaining evidence is based on one party's word against the other.

As a result, I find that while both parties have provided sufficient evidence for this case, the Landlord's evidence is no more compelling than the Tenant's evidence. Therefore, I find that the Landlord has not met the burden of proof in this case and as a result, I cancel the above Notices.

Conclusion

For the reasons set out above, I cancel the 1 Month Notice to End Tenancy for Cause issued by the Landlord to the Tenants on January 24 and February 21, 2014. The tenancy will continue until it is ended in accordance with the Act.

However, in an attempt to promote a continuing successful tenancy, the parties are encouraged to work together and communicate by means that would allow no opportunity for confrontation. The parties are also cautioned about their rights, obligations and remedies under the Act and the burden of proof in dispute resolution proceedings.

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: May 22, 2014

Residential Tenancy Branch

