



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: CNC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated May 15, 2014.

Both parties were present at the hearing. The tenant was assisted by an advocate and observer.. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and make submissions during the hearing. I have considered all of the testimony and relevant evidence. .

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The tenant has lived at this location for 13 years since moving into the complex in 2001 and the rent is \$768.00 per month.

Submitted into evidence was a copy of the One-Month Notice to End Tenancy for Cause, copies of communications, copies of character references for the tenant, a copy of a citation awarded to the tenant for his community volunteer work and a copy of comments from the tenant's physician.

The One-Month Notice to Notice to End Tenancy for Cause indicated that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health safety or lawful right of another occupant.

The landlord's agent testified that, since Pemberton Holmes has recently taken over the management of this complex they have received complaints about the tenant's conduct from more than one resident. The landlord presented some written letters of complaint, some of which the landlord admitted were solicited by the landlord.

One letter dated February 11, 2014 is addressed to the landlord's agent from a resident complaining of an incident that allegedly occurred at 7:30 p.m. on December 25, 2013. The individual stated that the tenant yelled at her, calling her an insulting name. The individual who wrote the complaint letter did not attend the hearing.

The landlord testified that she was not present when the verbal exchange, described by the person who wrote the complaint letter had allegedly occurred. The landlord did not explain why the written complaint was sent over a month after the occurrence date.

The tenant testified that this incident did not happen at all. In support of this, a witness confirmed that the tenant was not at home at the time of the purported verbal exchange and, in fact, he was away having Christmas dinner with the family for the entire evening between 4:30 and 9:00 p.m. on December 25, 2013. The tenant's witness confirmed that they too were present at the dinner on the date in question.

The landlord acknowledged that she did not conduct any further investigation nor discuss this allegation with the tenant, and merely accepted the complaint.

The landlord made reference to a second letter in evidence dated February 3, 2014 sent to the landlord from a resident couple. The letter stated that the female member of this couple was involved in a confrontation with the tenant on January 31, 2014. According to the two individuals who wrote the complaint, neither of whom appeared at the hearing, the woman was talking to another resident directly outside the tenant's door with her dog, when the tenant suddenly came out of his door and appeared to *"raise his foot to kick my dog."* According to the writer, the tenant swore at the complainant. The letter goes on to recount that the couple later approached the tenant in the parking lot to discuss his conduct and his *"only reaction was to smile like it was all a big joke."*

The landlord testified that, after receiving this written complaint, she did not investigate the matter further by interviewing the tenant, but served the tenant with an official warning letter dated February 11, 2014, from Pemberton Holmes. A copy of a letter titled, *"1st Warning"*, was submitted into evidence. This communication stated that:

"This type of behavior is not acceptable and will not be tolerated. Should we continue to receive complaints, we will have no alternative but to issue a 30 day eviction notice"

The tenant testified that he was never given a chance to provide his version of what had occurred because the landlord merely took the complaint as a fact without properly investigating it further. The tenant testified that, after he received this unexpected warning letter, he then telephoned the landlord and attempted to explain what had really transpired, but the landlord would not listen to his side of the story and hung up.

The tenant stated that he then wrote a letter to the landlord explaining the course of events, which differed from the version given by the couple who wrote the complaint letter. A copy of the tenant's letter is in evidence and it recounted that the other residents were outside the tenant's door when he opened it to exit. A dog that they had with them suddenly rushed at the tenant's cat who was inside his suite. The tenant stated that he merely blocked the dog from going after his cat and never attempted to kick the dog at all. The tenant stated,

"SHE THEN CALLED ME AN ASSHOLE AND STARTED SHOUTING AT ME. I IMMEDIATELY GRABBED MY LAUNDRY BASKET AND HAD TO GO AROUND THEM BOTH TO THE ELEVATOR,....SHE SAID SHE WAS GOING TO TELL HER HUSBAND AND I QUOTE 'PUT IT STRAIGHT'."

The tenant stated that he should have reported the confrontation to the landlord but felt he was more mature than this. The tenant's letter to the Landlord also stated:,

"A COUPLE OF DAYS LATER (THE HUSBAND) STOPS ME IN THE BACK PARKING LOT AND PROCEEDS TO VERBAL ATTACKS WITH VULGAR LANGUAGE AND THREATS THAT HE WAS GOING TO KILL ME.....I FELT THREATENED FOR MY SAFETY, WELFARE AND COMFORT."

The tenant ended the letter by asking the landlord, "PLEASE RECONSIDER BECAUSE I AM NOT THE PERSON YOU HAVE BEEN HEARING ABOUT" (Reproduced as written)The tenant stated that he receivedno response.

The landlord acknowledged that she did not rescind the caution letter from Pemberton Holmes, nor did the landlord look further into the tenant's concerns about him being targeted as a victim for harassment in this incident.

The landlord stated that a third complaint in the form of an undated handwritten letter came from a person who stated she allegedly witnessed an altercation in the parking lot between the tenant and the same couple who made the February 11, 2014 complaint about the dog incident. This individual stated that the tenant got out of his car and was "staring down" the couple and "proceeded to mouth them off, for no reason at all".

In this letter, the person described several similar incidents she either allegedly witnessed or heard about from others and concluded the letter by stating,

"I truly believe he is insane and a safety concern to all who live here....I am very concerned about this matter and think everyone who lives here in peace would be much safer without him here" (Reproduced as written)

After the above complaint letter was received by the landlord, no further investigation was apparently conducted by the landlord about the veracity of these most recent allegations. However, Pemberton Holmes proceeded to issued\ the tenant a Second Warning, titled, *"Noise Complaint"* dated May 8, 2014 cending with the statement below:

"As this is your 2nd warning, a 30 day eviction notice will be issued."

The landlord testified that they then served the tenant with a One Month Notice to End Tenancy for Cause dated May 15, 2014. This is the Notice being disputed by the tenant.

The landlord's evidence indicates that on the same day they served the One Month Notice to End Tenancy for Cause, Pemberton Holmes served the tenant with further notification that they expect the tenant to be out by June 30, 2014 and have arranged to show his suite to potential renters *"between the hours of 9:00 a.m. and 7:30 p.m."*

The tenant stated that throughout his 13-year tenancy, despite the challenges of his disability, he has lived harmoniously with residents in the complex.

The tenant testified that feels he is being badgered and goaded by certain individuals in the complex. According to the tenant, instead of protecting him or investigating the alleged incidents to find out the truth, the landlord has used the unsubstantiated allegations for the purpose of supporting written warning letters placed on the tenant's record. The tenant believes that he is also being persecuted by the landlord who is clearly intent on terminating his tenancy.

The tenant submitted character references from various sources, including a copy of a citation he received for his community volunteer work helping residents and staff at a care home and letters attesting to the tenant's kindness to animals, his quiet and gentle nature, his compassion for seniors and the fact that he has managed despite disabilities he has to be a positive influence to all. A letter from a mental health organization states that the tenant has been a client for 7 years and:

"there has been zero incidents of aggressive, intimidating, or threatening behavior directed towards staff. Safe and affordable housing in the community of choice appear to be factors in (the tenant's) ability to maintain overall stability and live independently."

A letter from the tenant's doctor discusses the tenant's confidential disability condition and states that the tenant:

"has been compliant all the time he has been my patient. He has always been respectful and appropriate in his conduct...for the past 15 years to both me and my medical office attendant. He has not had any angry outbursts or behavior for

the past number of years that he has been my patient. I can advocate for his kind and compassionate behavior and personality. He has always attended my office for regular attention and is a very agreeable and compliant patient.”

The tenant's witnesses and statements from relatives indicated that they do not believe that the tenant would ever be rude to a senior nor cruel to an animal, as being alleged, given his hands-on volunteer work with such individuals and organizations.

The tenant's position is that the landlord's collection of complaints and the reports of "confrontations" are part of a campaign to malign and discriminate against the tenant in order to unfairly deprive him of his home.

The tenant requests that the One Month Notice to End Tenancy for Cause be cancelled.

The landlord stated the One Month Notice to End Tenancy for Cause is supported by the facts and should be enforced. The landlord made a comment that, if this Notice is cancelled, they will merely issue another one to evict this tenant regardless.

Analysis

Right to Quiet Enjoyment

Under the Act, the activities of a tenant must not significantly interfere with nor unreasonably disturb other occupants. Section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29.
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the rights to quiet enjoyment listed above would apply equally to all. In situations where there is a conflict occurring between two different residents or groups of residents, it is often not easy to determine whether one or the other, or even both, have violated the Act. Each one may accuse the other of causing the conflict. But most often it involves conduct issues on *both* sides.

Properly Investigating Complaints

I find it is incumbent upon the landlord to consider both sides in conducting a balanced and unbiased inquiry or investigation, particularly when there are complaints about conduct during the conflict incident, coming from both sides of the conflict. I find that it should not be assumed by the landlord that the party who came forward first to lodge the complaint is therefore faultless. It is a fact that some unrepentant perpetrators of conflict are chronic complainers and some innocent victims may not complain at all.

I find that, the fact that a complaint has been received is not in itself sufficient evidence to prove that a violation was perpetrated by the person being complained about. In this instance, I find that the landlord's practice of accepting a complaint from one party at face value as the being the absolute truth, and documenting it without equal consideration of the other party's response, is not a fair nor effective way of ensuring that the rights of all tenants under the Act are protected.

In any case, where a complaint consists of anecdotal accounts of a past verbal exchange between tenants such as, who said what first and what was said etc., I find that it is impossible, based only such accounts, to determine whether a particular person's conduct crossed the threshold of "*unreasonable disturbance*" under the Act.

Moreover, in considering the evidence, I find that none of the individuals, whose written complaints were relied upon by the landlord in issuing the One-Month Notice to End Tenancy for Cause, even participated the hearing and therefore they could not be cross examined. I do not accept the landlord's explanation that these witnesses did not want to phone into the hearing as they fear for their safety.

Complaint Letters

The complaint letter from the couple basically alleged that the tenant *looked like he was going to* kick a dog. I find that this kind of subjective commentary is not worthy of noting. Yet that allegation, which was not witnessed by the landlord, was accepted by the landlord as reason for issuing a warning letter to the tenant.

I find that the incident occurred in front of the tenant's door where the other people and their dog were located at the time. It is clear that the tenant did not go out of his way to seek out a conflict.

The complaint about the tenant's conduct on Christmas evening appears not to have any merit since the tenant was not on the premises at the time of alleged occurrence and the complaint was made some time after the incident, possibly at the request of the landlord.

Another one of the complaint letters from a person not actually involved in the incident being reported, indicated that they merely observed the tenant with someone else from

a distance and described the tenant's conduct in vague terms such as "*staring down*" the other person and proceeding to "*mouth them off*". I find that comments made in this letter to be revealing:

"I truly believe he is insane and a safety concern to all who live here"

Although the landlord and some of the complaint letters implied that there are concerns about the tenant being dangerous, I find nobody has submitted evidence to support this. No testimony was given to allege that the tenant has ever physically interfered with anyone.

Tenant's Allegation of Persecution

I find that the tenant is challenged by a disability and is apparently functioning well despite this. I find that, as a person with a disability, the tenant may be judged or misunderstood by others based on behaviour that some may find peculiar or even disturbing for their own reasons.

However, I find that the fact the tenant is disabled does not put others at risk, nor is it a valid basis to terminate a tenancy under the Act. I further find that there is a genuine possibility that this tenant's complaints made to the landlord in writing, that he is being unfairly targeted by certain residents, or even the landlord, may be true.

I find that the landlord did not respond to the tenant's complaints about being persecuted by certain individuals. Copies of these complaints were in evidence.

I find that the landlord has an obligation under the Act and Human rights legislation to ensure that the tenant is not being baited or harassed by other residents based on his medical condition. I further find that the landlord is obligated under the Act to consider and respond to the tenant's complaints equally to those from others.

Given that this tenant has resided at this complex for thirteen years, and appears to have a positive tenancy record, until the new management took over, it is hard to accept that he has any potential to be violent or substantially interfere with others.

I find that the tenant's submissions about his volunteer work and interactions with diverse people and organizations over a long period of time cannot be discounted.

One-Month Notice to End Tenancy for Cause

Based on the evidence before me, I find that there is absolutely no merit in the landlord's position that this tenancy should be ended based on unsubstantiated allegations from third parties.

For the reasons above, I find that the One-Month Notice to End Tenancy for Cause must be cancelled.

Further Orders

Given the landlord's threat made during the hearing that the landlord intends to reissue additional Notices to evict this tenant should the outcome of this hearing be in the tenant's favour, I find it necessary to caution the landlord to comply with the Act and to make the following additional orders:

- I order that the landlord respond to the tenant's written communications or complaints as required under the Act and to do so in writing within 1 week of receiving the complaint or communication.
- I further order the landlord to ensure that any other residents in the complex are not harassing the tenant based on his disability or any other reason, nor purposely engaging the tenant in conflicts.
- I order that the landlord instruct other residents, not to approach other tenants in the complex when they have complaints or criticism, but to bring their inquiries to the landlord instead.

Based on the above, I hereby order that the One-Month Notice to End Tenancy dated May 15, 2014 is cancelled and of no force nor effect.

Conclusion

The tenant is successful in the application and the One-Month Notice to End Tenancy for Cause is cancelled. The landlord is ordered to follow the Act, respond without delay to the tenant's communications in writing and to intervene to protect the tenant's right to quiet enjoyment when the tenant is being subjected to discrimination or harassment by other residents in the complex.

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: July 08, 2014

Residential Tenancy Branch

