



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated and served April 14, 2014.

The Notice alleges that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord,
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord, or
- put the landlord's property at significant risk.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show, on a balance of probabilities, that the tenant has committed any of the three infractions listed in the Notice?

Background and Evidence

The rental unit is a bachelor apartment in a 109 unit apartment building. The tenant has been residing there since December 2010. The landlord acquired the building in September 2012 and assumed this tenancy. The rent is \$565.00 per month. Neither party was able to refer to a written tenancy agreement but they agree that the landlord holds a \$282.50 security deposit.

The landlord's representatives began their evidence by referring to the extract of an RTB decision rendered February 15, 2014 by another arbitrator in an application by this same tenant against this landlord. In that application the tenant sought to cancel a ten day Notice to End Tenancy for unpaid rent and for relief in the nature of a repair order

and an order regarding landlord entry. The extract is a stunningly scathing report of the tenant's conduct at that hearing. The arbitrator reports that the tenant could not be repressed from complaining about the past and present "ills" with the landlord. She is described as being hostile, interrupting constantly and not allowing the arbitrator or the landlord to speak. The tenant apparently asked the arbitrator about her national origin. The tenant told the arbitrator she was recording the hearing and that she was in touch with a news organization and with her MLA about the landlord's conduct.

The tenant apparently quit the hearing before the landlord's representatives could be called on to respond. The arbitrator dismissed the tenant's claim. I assume though that the tenant's application to cancel the ten day Notice was successful, as the landlord appears to have admitted at that hearing that the rent had been paid on the same day the Notice had been issued.

The landlord's representatives submitted the signed written statement of another tenant, Ms. T.T. relating that on March 31, 2014 the tenant insulted and harassed her in a public place near the apartment building. Her statement relates that the tenant was actin like a bully and when Ms. T.T. put her hand up the tenant threatened to have her charged with assault. The statement relates that Ms. T.T. walked away but soon the tenant confronted her again and threatened that she could have Ms. T.T. "taken out" and could have her evicted. The statement relates that Ms. T.T. escaped again but was confronted by the tenant a third time back near the apartment building. The statement relates that the tenant asked her how she like the "Christmas present" the tenant had set outside her door and why Ms. T.T. had never thanked her for it. The statement relates that once Ms. T.T. was back in her apartment she called the landlord's representative "Dennis" and that she heard a mild thud at the door. When she opened the door she saw "big fresh blood drops" on the door sill on the carpet and on the wall. Police were called. Dennis came and took photos.

Ms. T.T.'s statement relates that she is very frightened of the tenant. She described an incident from the year previous when she gave the tenant a pot of food and thereafter received odd phone calls and "creepy" notes from the tenant. She also relates that the tenant watches her and that an acquaintance told her the tenant watches him too and calls his home to bother him.

Ms. T.T. related another incident about a year before when the tenant walked in uninvited to a party Ms. T.T. was having, sat down and started playing her guitar, angrily telling everybody to shut up and listen.

The landlord's representatives submitted one of the notes to Ms. T.T.. In it Ms. T.T. is called an "a**hole." It says "I tried – again – to return your f'in pot." The note also appears to invite Ms. T.T. to a music show that night.

Mr. D.H. gave evidence that he came and took the three photos on the red spots outside Ms. T.T.'s door on March 31st. The photos show one clear blood coloured spot on the aluminum sill and possibly one or two spots on the hallway carpet. They don't show any spots on the wall. The obvious spot on the sill is perhaps three or four centimeters in diameter. In one of the photos there appears some Kleenex, white and pink in colour. Mr. D.H. could not explain why the Kleenex was in one photo but not the other two. Mr. D.H. testified that he spoke to Ms. T.T. and she was sure it was the tenant who put the spot(s) there. He then reported to his superiors.

The tenant gave evidence that in fact it was she who had been attacked by Ms. T.T. a year ago. She referred to an email about it she sent to the landlord May 3, 2013. She says Ms. T.T. is a "known psych patient." She says that she only received Ms. T.T.'s recent statement May 23rd with the landlord's evidence package and that when she read it she called the police. She says there are three police files opened against Ms. T.T. as the result of the tenant's complaints.

The tenant testifies that she knows nothing about the red spot(s) on Ms. T.T.'s door. She says the March 31, 2014 incident was completely opposite from Ms. T.T.'s statement; that it was Ms. T.T. accosting the tenant and she has later tried to get a street musician who saw it all to sign a statement to that effect.

The tenant also presented a copy of a letter sent to the landlord by the tenant's MLA and dated April 24, 2014. In it, the MLA chastises the landlord for what he describes as harassment against the tenant by issuing eviction noticed for non-payment of rent when the rent had been paid.

The tenant referred to the landlord's written response to the MLA's letter. The response, dated May 27, 2014, chastises the MLA, rightly in my view, for writing the letter "without ever asking to get our side of the story...." The response goes on to state that the tenant "threw a used tampon at another resident living in her building. We have pictures and statements to back this claim up."

Analysis

The ending of a tenancy is a very serious matter. A significant portion of British Columbians are renters. Many will be renters all their lives. The *Residential Tenancy Act* (the “*Act*”) has been designed to provide some “security of tenure” to those people by codifying the specific grounds upon which a landlord can end a tenancy.

One of those grounds is where a tenant has by her actions significantly interfered with or unreasonably disturbed another occupant. Another is where a tenant has seriously jeopardizing the health or safety or lawful right of another occupant or the landlord.

Putting the landlord’s property at significant risk is a third valid ground for eviction under s. 47 of the *Act*, however, I find that the evidence presented by the landlord at this hearing shows no basis for concluding the landlord’s property has been put at *significant* risk.

I am unsure what the extract from the February 2014 hearing is meant to indicate. At this hearing the tenant was calm and respectful; taking her turn when asked and refraining from interrupting the landlord’s representatives. At the other hearing, it appears the tenant waited on the phone for fifteen minutes before redialing into the hearing only to be told, in the presence of the landlord’s representatives, that her application was dismissed because she did not dial in within ten minutes. Did this agitate her? Is that why she acted that way? The tenant had brought that application and was obliged to relate her past and present ills with the landlord in order to prove her claim. Was she anxious or flustered? Was she simply rude? Does this mean she should not be believed at this hearing? Does the fact that the tenant asked the arbitrator at that hearing what her national origin was mean that the tenant is somehow less credible or is emotionally troubled or mentally ill?

I cannot fairly draw any such conclusions from the extract and so I give it no particular weight in this decision.

Though the tenant and Ms. T.T. called the police, the tenant calling at least three times according to her evidence, no police reports were tendered as evidence and there is no indication the police caused charges to be laid against either tenant.

At its core, my decision must turn on which version of March 31, 2014 events I accept. I give little weight to the events of a year ago. The fact that no action was taken as a result of those events is a strong indicator that the actions of the tenant, if they did occur as alleged in Ms. T.T.’s statement, were not *significant* enough or *serious* enough to

warrant landlord action. And so it is the March 31, 2014 incidents that are to be examined.

Prior to 2005, the *Residential Tenancy Act* required that in cases such as this more than one other occupant be significantly interfered with or unreasonably disturbed. “[T]here must be some form of general disturbance to other tenants of the building as this avoids a purely inter-party personal dispute between two occupants with differing views” – Darling J., *Reschke v. Polygon Properties Ltd.* (1980) BCSC Van.Reg. A801020.

That provision has been changed so that only “another occupant” need be shown to have been significantly interfered with or unreasonably disturbed, but the admonition is still valid. Where the central issue is the claim of a single tenant against another, the adjudicator must proceed with caution. The fact that the tenant here has been living in the building for over three years in a 109 unit apartment building without her conduct becoming an issue with her landlord should only heighten that caution.

The landlord has put itself at a distinct disadvantage at this hearing by relying on an mere signed statement from Ms. T.T.. Mr. Justice McEwan of the B.C. Supreme Court recently commented on the problem of determining credibility from a written statement in the case of *Kenyon v. BC (Superintendent of Motor Vehicles)*, 2014 BCSC 168. That case involved two competing written statements. McEwan J. determined the competing written statements could not be reconciled,” because the ordinary means of determining the truth are proscribed. There are no face-to-face hearings. Cross examination is not allowed.”

While this hearing was by telephone conference call, questioning can and did occur. Had the landlord presented Ms. T.T. at the hearing, at least she could have been questioned and would have been present to reply to the evidence of the tenant. Ms. T.T.’s written statement is coherent, consistent and credible, but so is the evidence presented by the tenant.

As well, there appears to have been no investigation or inquiry conducted by the landlord into the allegations of Ms. T.T., at least, the tenant was not questioned or confronted about them. It would appear the landlord’s representatives were satisfied that Ms. T.T. was the credible one and did not feel the need to look any further. Indeed, in the same letter the landlord wrote chastising the MLA for his failure to investigate, its representative stated to the MLA that the tenant had thrown a used tampon at someone. There was no evidence of that at this hearing. In fact, Mr. D.H. was very clear that there was no tampon at Ms. T.T.’s door on March 31 and, had the landlord’s

representatives investigated, they may have discovered she does not use tampons, as she testified at hearing.

The landlord's representatives indicated they had another witness to prove the validity of the grounds in the Notice but that he was "too scared" to attend. I give no weight to that evidence. An unwilling witness may be subpoenaed under the *Act*. A person concerned for his or her safety from another person is entitled to rely of the protection of the police.

The landlord's representatives may be satisfied that Ms. T.T. is the credible one and they may be right. I certainly mean no disrespect to Ms. T.T. but the competing evidence before me; a credible written statement versus credible *viva voce* testimony does not substantiate, on a balance of probabilities, that the tenant has committed acts which justify her eviction on the grounds referred to in the Notice. The landlord has not proved its case.

Conclusion

The tenant's application is allowed. The one month Notice to End Tenancy dated April 14, 2014 is cancelled. The tenant is entitled to recover the \$50.00 filing fee she paid to bring the application. I authorize her to reduce her next rent due by \$50.00 in full satisfaction of the fee.

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 22, 2014

Residential Tenancy Branch

