



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nordan Villa
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, CNC, OPC

Introduction

The tenants applied for an order pursuant to section 47(4) of the Residential Tenancy Act to set aside Notices to End a Tenancy dated March 3, 2014 and April 17, 2014 for cause. The tenants also applied for an Order that the landlord comply with the Act and for compensation as a result of the landlord's breach of their covenant of quiet enjoyment by allegedly harassing them. The landlord applied for an Order for Possession pursuant to both Notices. All the parties attended the hearing.

In the course of this proceeding and upon review of the tenants' application, I have determined that I will not deal with all the dispute issues the tenants have placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the tenants' request to set aside, or cancel the landlord's Notices to End Tenancy, the landlord's application for an Order for Possession and I have dismissed the balance of the tenants' claims with liberty to re-apply pursuant to rule 2.2 of the Rules of Procedure.

Issue(s) to be Decided

Are the tenants entitled to an Order cancelling the Notices to End the Tenancy or is the landlord entitled to an Order for Possession?

Background and Evidence

Service of the Applications for Dispute was admitted by the parties. Based upon the evidence of the landlord I find that the Notices to End the Tenancy were served on March 6, 2014 by posting one on the door on March 3, 2014 and the other on April 20, 2014 by placing it in the tenants' mailbox on April 17, 2014. The landlord testified that the tenants have been repeatedly late in paying rent on the following occasions:

September 2, 2013

The landlord testified that she received a rental cheque from the tenants on September 2, 2013 and issued a receipt endorsed for "use and occupation only" on that date.

November 5, 2013

The landlord testified that she received a late rental payment from the tenants on this date and issued a receipt unendorsed. That receipt was dated November 1st but crossed out and then altered to November 5, 2014. The landlord's explanation was that she always dates her receipts on the 1st and then changes the date to suit the situation.

April 2, 2013

The landlord testified that she issued an unendorsed receipt for rent received late on April 2, 2013. The copy of the receipt produced appeared to be originally dated April 1st but altered to April 2, 2013

January 3, 2014

The landlord testified that that she telephoned the tenants on January 2nd enquiring about the rent whereupon PV advised that he had already paid it. The landlord attended with her husband at the tenants' unit and the landlord alleges the tenant PV stated that he could produce a video of himself depositing the cheque the day before. The landlord testified that PV then became extremely agitated, threatened her by waving his hands in her face "military style" and was verbally abusive. She could not testify as to what the exact words that PV used. The landlord testified that PV followed her home threatening that he would "get into her apartment." The landlord testified that she called the police as a result of this incident. The landlord testified that this conduct made her ill for some time after the incident. The landlord produced a written statement made by her husband in support. The landlord testified that PV issued a rent cheque on January 3, 2014 and apologized for his behavior. The landlord testified that PV at first offered to pay in cash but the landlord refused as he wished to video himself making the payment. The landlord testified that PV was verbally abusive and threatening during this encounter. The cheque dated January 3, 2014 was receipted by the landlord on January 1, 2013 and January 3, 2014. The landlord's explanation was that she intimidated by PV to issue it the first time for January 1, 2014. They were not endorsed "for use and occupation only." Two copies of the receipts were submitted. The copy dated January 1, 2013 had the words "under duress" written over it. The January 1, 2014 receipt was endorsed illegibly. There was no explanation for the incorrect years.

March 2, 2014

The landlord testified that PV issued a cheque on March 2, 2014 upon the landlord's request. The landlord issued a receipt "for use and Occupation" on the same date. She was unable to produce a copy of this receipt.

There was no evidence adduced that the tenants paid their rent late thereafter or that the landlord issued further receipts endorsed "for use and occupation only." Accordingly I will assume that rent was paid and received without incident.

The landlord testified that PV was generally verbally abusive and threatening to her. She testified as to several occasions in addition to the incident on January 2 and 3 2014. The landlord testified that on July 8, 2012 she advised PV that he could not park an uninsured vehicle on the property. The landlord testified that PV became verbally abusive, screaming and ranting which she found intimidating. The landlord was unable to provide particulars of what PV actually said. The landlord testified that on April 9, 2013 she knocked on the tenants' door and PV answered screaming and yelling so intensely that the police attended at her request.

The tenant PV testified that he always paid his rent on time save an except for September 2013 when he stated that he returned from an overseas trip and was very ill. On that occasion, he paid that rent on the 2nd of September. He testified that there is a pattern with the landlord in which she telephones him the day after the rent is due and claims that either she lost the cheque or that the tenants never delivered it. PV produced copies of his chequebooks indicating that cheques were always written or dated on the 1st day of each month on every occasion except September 2013. He also produced records of his cancelled cheques. He testified that on many occasions he was required to cancel the cheques and reissue them because of the landlord's conduct or allegations. He testified that for example, he paid his November 2013 rent on the 1st by depositing the cheque in the landlord's mail box on October 31st, yet he received a note from the landlord claiming she had not received the rent. PV testified the same thing happened in April 2013.

PV testified in detail regarding the January 2014 incident. PV testified that he paid the rent as usual on time but the landlord called on January 2, 2014 advising that she misplaced or that he had not delivered his cheque. PV stated that he advised the landlord that he had a video of depositing it in her mail box. The landlord and her husband attended his unit later and demanded to see the video or a new cheque. PV testified that he asked the landlord's husband what would happen if he produced the video and was told "nothing would change." PV then advised the landlord's husband that he would once again cancel his cheque and issue a new one. He testified that throughout this conversation the landlord was more than ten feet away from the door and that he spoke almost exclusively to her husband. He denied threatening or following anyone. PV attempted to pay his rent in cash the next day January 3, 2014 provided he could video the payment to document it. The landlord refused. PV testified that he ultimately paid his rent on January 3, 2014 by cheque and obtained a receipt for that. PV did not testify regarding a second receipt.

PV testified that on July 8, 2012 the landlord telephoned him late in the evening and requested that he immediately move his car. He testified that with great difficulty he was able to move it to a friend's driveway. He testified that he may have been upset because of the landlord's unreasonable behaviour, but was not abusive or threatening to her.

PV testified that on April 9, 2013 someone knocked on his door after 9:00 PM waking his infant child. He did not answer at first but tended to the child. He testified that when he ultimately opened the door he saw someone walking away whom he did not recognize. He shouted angrily “go away” or “what do you want.” Later that night the police attended his unit advising him that the landlord reported him for threatening her earlier. He was informed that it was she who knocked on his door.

The tenant CS testified that she witnessed the incident on April 9, 2013 and that PV answered the door and said “go away why do you knock so late” as whoever knocked on the door disturbed their infant. She also testified that usually the landlord was the aggressor, making difficult demands and that PV never threatened her although he may have been angry. CS testified that either she personally or PV always paid the rent on time except for September 2013 yet the landlord regularly either accused them of not paying it or stated that she lost the cheques.

Analysis

The Notices to End a Residential Tenancy rely on sections 47(1)(b), (d)(i), and (h)(i)(ii) of the Residential Tenancy Act. Those sections provide as follows:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(b) the tenant is **repeatedly late paying rent**;

(d) the tenant or a person permitted on the residential property by the tenant has:

(i) **significantly interfered with or unreasonably disturbed** another occupant or the landlord of the residential property,

(h) the tenant

(i) **has failed to comply with a material term**, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

The landlord relies upon the ground that the tenants were repeatedly late paying the rent which is a breach of a material term and of sections 47(1)(b) or (h) of the Act. The *Residential Tenancy Act* provides by section 47 (1) (b) that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. The Residential Policy Guideline #38 states that: “Three late payments are the minimum number sufficient to justify a notice under these provisions.” The policy guideline also contains the following comments:

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, **if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late**

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision

The *Act* does not define what constitutes “repeatedly late”. The policy guide says that three late payments are the minimum that would warrant the issuance of a Notice. The guideline also states that exceptional circumstances may be taken into account when determining whether a tenant has been repeatedly late paying rent. In this matter I find that the alleged late payments in total are so far apart that they cannot be considered to be repeatedly late. In the alternative it is the landlord who has the strict burden of proof. The tenants have adduced clear and concise evidence as to each and every payment documented by written evidence. I accept their evidence as given honestly and in a straight-forward manner. There is conflicting evidence from the landlord but it was not entirely coherent or logical. For those reasons, I prefer the evidence of the tenants. Accordingly, overall I am not satisfied on the balance of probabilities that the landlord has established that tenants paid the rent repeatedly late. I find the landlord has not proven this ground of cause.

The landlord has also relied upon section 47(1)(d)(i) that the tenants have **significantly interfered with or unreasonably disturbed** another occupant or the landlord of the residential property. From the landlord’s testimony it’s clear that she claims that she has been disturbed or interfered with by the tenant PV’s alleged angry and threatening behaviour.

It is the landlord who has the burden of proof on the balance of probabilities to establish cause. This onus must be satisfied strictly where the landlord seeks to end a tenancy.

In this matter I have not given any weight to the statements of the landlord’s husband and any other party who did not attend the hearing to give testimony or be cross examined. The tenants have a right to hear and confront the evidence against them first hand. I also note that the landlord has supplied some evidence regarding matters not

referred to at the hearing and has submitted evidence of issues occurring after the issuance of the notices. Some of that evidence was received after the conclusion of the hearing. I have not considered any of that evidence as it is irrelevant to these proceedings.

I find that the tenants' testimony was given in a very straight-forward, clear and simple manner and I accept it. The tenants have rebutted every allegation made against them by way of their testimony and written evidence. In this matter the landlord failed to provide evidence of such a degree that establishes that the tenants' conduct significantly interfered with or disturbed her. I find that she may have been upset or disturbed by the incidents but that the tenants cannot be found on the balance of probabilities to have caused such upset or to have interfered with the landlord.

I therefore find on the balance of probabilities that the landlord has failed to prove any cause as alleged in all the Notices. The tenants' application is successful. I therefore order that the Notices to End Tenancy dated March 3, 2014 and April 17, 2014 directing the tenants to vacate, be and are hereby cancelled.

Conclusion

I have cancelled the Notices to End a Residential Tenancy dated April 17, 2014 and March 3, 2014. I Order that the tenancy is confirmed and shall continue. The tenants are entitled to recover the \$ 100.00 filing fee and may deduct that amount from their next rental payment without any penalty. I have dismissed with leave to reapply the remainder of the tenants' applications. I have dismissed all of the landlord's applications. The landlord may not recover the filing 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 10, 2014

Residential Tenancy Branch

