



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Georgia Manor Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a One Month Notice to End Tenancy for cause and for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, Regulations or tenancy agreement.

The tenant, an advocate for the tenant, the landlord and two agents for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to have the Notice to End Tenancy for cause cancelled?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?

Background and Evidence

The parties agree that this month to month tenancy started in January 2000. At present the tenant pays a monthly rent of \$465.00 a month due on the 1st of each month. The landlord testified that the tenant was served a One Month Notice for cause on April 17, 2014 by posting it

to the tenant's door. This Notice has an effective date of May 16, 2014 and provides the following reasons to end the tenancy:

- 1) *The tenant is repeatedly late paying rent.*
- 2) *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,*
 - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
- 3) *The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
 - (ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.*

The landlord testified that the tenant has been repeatedly late paying rent throughout her tenancy. The landlord ME testified that this year the tenant has been late on two occasions in March and April.

The landlord testified that over the years the tenant has significantly interfered with and unreasonable disturbed other tenants. In the past the landlord has been able to talk to the tenant and sort things out but the tenants more recent outbursts involved the tenant throwing a brick at another tenant, the tenant has used a hammer or steel bar to bang on other tenants' doors which has not only caused disturbances for other tenants but has also severely damaged the steel doors to the other tenants' units. The tenant has been arrested many times prior to the landlord issuing the One Month Notice and then again three more times since the Notice was served upon the tenant.

The landlord testified that their main concern now is for the safety of the other tenants. The landlord testified that he has approached the tenant to try to get the tenant to agree to assistance but unless the tenant asks for help they will not provide it. The landlord testified that the tenant has a tendency to alcohol and then gets violent towards other tenants. The landlord

testified that the tenant has threatened another tenant with bodily harm and the tenant has attacked another tenant.

The landlord ME testified that two tenants have written in explaining the tenant's behaviour towards them. One tenant AM described the tenant's behaviour as becoming more erratic and violent and dangerous and the tenant had thrown a brick at the tenant AM. The tenant AM stated in his letter that he has been compelled to call the police on multiple occasions. The other tenant AL has written in to describe his encounters with the tenant. This tenant AL has provided five police file numbers from February to May, 2014. The tenant AL has also provided a Community Court file letter in which the tenant was arrested for uttering threats against the tenant AL. This letter sets out conditions and an Order that the tenant is to have no direct or indirect contact with the other tenant and the other tenant is to have no direct or indirect contact with the tenant.

In the Court documents provided in documentary evidence, the landlord refers to these and testified that the tenant has provided an undertaking given to the Justice or a Judge and undertakes to attend court on February 18, 2014 and did commit an offence of uttering threats on February 04, 2014 contrary to section 264.1(1) of the Criminal Code. The tenant agreed to keep the peace and be of good behaviour, to advise the Bail Supervisor of her residential address and not to change the address without advising the Bail Supervisor; to have no contact with AL; not to possess any weapons as defined in the Criminal Code of Canada; to not possess any knives outside of her own suite; to attend at a Forensic outpatient clinic or such other similar clinic as directed by the Bail Supervisor for assessment, treatment and counselling.

The tenant AL has stated in his letter that in March the tenant throw a flat screen TV at the tenant AL's door which the tenant AL had left in the hall waiting to be picked up. The tenant left and then returned and did it again. In February, 2014 the tenant was banging on AL's door and yelling at AL while kicking AL's door and walls uttering threats over the course of 3.5 hours. The tenant AL stated that he called the police and the police officer was able to hear the tenant utter threats while the tenant AL was still on the line. The police asked AL to stay on the line as the police were recording the tenant. The tenant AL stated that the tenant throw kitty litter full of feces and urine at his door and pushed some of it under the door the police came and took a picture of this and arrested the tenant for uttering threats. The tenant AL stated in his letter that

on April 11, 2014 he woke up to use the common bathroom and his door was littered with 12 to 15 post-it notes saying things like "Karma" "God bless you" and "Fuck you". AL called the police again to report that the tenant had breached her conditions for no contact.

The tenant AL stated in his letter that on April 12, 2014 as the tenant AL was walking down the hall the tenant came out into the hall and started to taunt AL calling him a racist and using foul language. AL again called the police. On April 13, 2014, the tenant AL stated in his letter that he had his apartment door open a few inches when the tenant came down the hall and came partway into AL's apartment and said "peace brother here have a beer" AL stated that he could not believe the tenant had entered his apartment and the tenant left the beer and went out onto the fire escape saying "don't fuck with me". The tenant AL stated that the tenant then came into AL's apartment again. AL called the police and locked his door the police were going to arrest the tenant again; however, the tenant AL stated that he let it go as the landlord was going to evict her.

The tenant AL stated in his letter that on May 02, 2014 he was returning to his apartment when the tenant and a guest came out into the hall and the tenant said to her guest "that the one that called me the N Word. That's why your here" AL stated in his letter that later he was standing in the doorway to the fire escape when the tenant came behind AL and shoved AL and the door. The tenant said "we are going to spare you today fuck you call the cops fuck you" . The tenant AL stated that he called the police again and the tenant was arrested for non compliance and breach of conditions.

The landlord has provided a police business card and three names or numbers of police officers who attended when the tenant AL called them. The landlord testified that someone is going to get hurt badly as the tenant has a tendency for violent behaviour and this situation cannot be allowed to continue. The landlord requested that the One Month Notice to End Tenancy is upheld and they orally requested an Order of Possession effective as soon as possible. The landlord agrees the tenant has paid rent up to the end of June, 2014.

The tenant testified that she is the only black woman living in the building and the only women living on the third floor. The tenant testified that she has to coexist with the other male tenants' different attitudes and personalities. The tenant testified that she had a run in with one of the

tenants AM on her floor. The tenant testified that the tenant AM is a gay man and one day the tenant saw this tenant AM with a child in his unit. The tenant testified that she used to work on the east side and knew a lot of the children and their mothers. She recognised this child and challenged the tenant AM. The tenant testified that AM got drunk and nasty towards the tenant. The tenant testified that she spoke to the landlord's manager and was told he would pass the information on to the landlord.

The tenant testified the other tenant AL lives at the other end of the hall; one day another tenant living in the building told the tenant that AL and his friends surround him and called him a nigger. This other tenant was upset and he spoke to the tenant about the incident. On another day the tenant testified that she was speaking to someone on the phone talking to them about the issues she was having when AL opened his door and started to shout and swear at the tenant. The tenant testified that she told AL that he could not talk to her that way and that she would get a man to talk to him. The tenant testified that another man who lived across the hall also harassed the tenant. The tenant testified that no one would listen to the tenant and it was the tenant who called the police to get these people away from her. The tenant testified that she is not a violent woman

The tenant agreed she had to go to Court on February 18, 2014 as the tenant was accused of uttering threats against another tenant. The tenant also agreed that she has a Restraining Order against her not to have any contact with AL. The tenant agrees that she has been arrested again since the restraining order was put in place but denies contacting the tenant AL.

The tenant testified that she had some roses and plants on the fire escape which someone throw down. The tenant AL was waiting at the door with his phone camera but the tenant testified that she did not react. The tenant disputes throwing a TV at the tenant's door and states she only weighs 130 pounds and could not pick up a TV. The tenant disputes posting post-it notes and disputes entering AL's apartment. The tenant testified that she asked the landlord for the tapes from the security camera as these would have shown she had not done these things but the landlord would not provide them.

The landlord asked the tenant why the tenant refuses when the landlord offers to assist the tenant get help. The tenant responded that it is irrelevant to this hearing.

The tenant's advocate states that the landlord has not provided sufficient evidence such as tapes from the security cameras.

The tenant testified that the landlord has not provided a safe place for the tenant to live; the tenant seeks an Order for the landlord to comply with the *Act*.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the One Month Notice to End Tenancy; the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

Having reviewed the documentary evidence and in light of the police file numbers, the statements from two other tenants and the documentary evidence showing that the tenant was arrested and charged with an offense and conditions of no contact were imposed; I find the landlord has provided sufficient corroborating evidence to meet the burden of proof, on a balance of probabilities, that the tenant has significantly interfered with and unreasonably disturbed other occupants of the building. I further find from the evidence before me that it is likely that the tenant has jeopardized the health, safety or lawful right of another occupant by uttering threats against them and through her other actions. I find the tenant continued with this behavior even after her court appearance in February and further incidents have occurred in February, April and May. Consequently, I am satisfied that the tenant has engaged in an illegal activity that has affected the quiet enjoyment, security, safety and physical wellbeing of another occupant.

I am not satisfied from the evidence before me that the tenant has been repeatedly late paying rent as the landlord has only provided two incidents this year when the landlord stated that rent was late.

The tenant's application to cancel the One Month Notice is therefore dismissed.

With regards to the tenant's application for an Order for the landlord to comply with the *Act*; the tenant has provided insufficient evidence to show that the landlord has not complied with the *Act* with regard to protecting the tenant's right to quiet enjoyment of her rental unit. This section of the tenant's claim is also dismissed.

I refer the parties to s.55 (1) of the *Act* which states:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

*(a) The landlord makes an oral request for an order of possession,
and*

*(b) The director dismisses the tenant's application or upholds the
landlord's notice.*

The landlord has orally requested an Order of Possession at the hearing. Therefore pursuant to s. 55 (1) of the *Act* and I grant the landlord an Order of Possession. As the landlord has accepted rent up to the end of June, 2014, the Order of Possession will be effective on June 30, 2014 at 1.00 p.m.

Conclusion

The tenant's application to cancel the Notice to End Tenancy for cause and for an Order for the landlord to comply with the *Act*, Regulations or tenancy agreement is dismissed without leave to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **at 1.00 p.m. on June 30, 2014**. This Order must be served on the tenant. If the tenant fails to comply with the Order it may be filed in the Supreme Court and enforced as an Order of that Court.

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 12, 2014

Residential Tenancy Branch

