



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to cancel a 1 Month Notice to End Tenancy for Cause issued on August 19, 2014, in which the Landlord cited the following reasons:

Tenant or a person permitted on the property by the tenant has:

- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Put the landlord's property at significant risk

Tenant has engaged in illegal activity that has, or is likely to:

- Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- Jeopardized a lawful right or interest of another occupant or the landlord.

(the "Notice")

The Tenants' application is seeking orders as follows:

1. To cancel the Notice; and
2. To recover the cost of filing the application.

The Landlord and his son, S.S. appeared. The Tenant, S.T. also appeared with a translator and agent, R.B., who presented on behalf of all three Tenants. All participants gave affirmed testimony and 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 at the hearing.

In a case where a tenant has applied to cancel a notice for cause the Residential Tenancy Branch Rules of Procedure require the Landlord to provide their evidence submission first, as the Landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

LANDLORD'S EVIDENCE

The Landlord's son, S.S., gave affirmed evidence on behalf of the Landlord as follows.

Although the Landlord confirmed there was a written tenancy agreement between the parties, no such agreement was introduced in evidence. I accept the evidence of S.S. as to the terms of the tenancy and note that the Tenants did not take issue with any of S.S.'s testimony relating to the terms of the tenancy.

Based on the testimony of S.S., the details of the tenancy are as follows: the Tenancy began on February 1, 2014. Rent was payable in the amount of \$1,350.00 per month payable on the first of the month. The subject unit is one of four in a four-plex building. The Tenants, D.T. and her husband, S.T. and their son, J.T. reside in the upper right hand unit.

The Notice was issued August 19, 2014 with an effective date of September 30, 2014.

S.S. provided the following information as to the reasons for issuing the Notice.

June 2014

Beginning in mid June 2014, the Landlord began receiving complaints from the other occupants in the four-plex about the Tenants. According to the information provided by the other occupants, S.T. and J.T. routinely drank in their vehicles or in the yard and

after consuming large quantities of alcohol, would have angry discussions which led to fighting.

July 2014 Incident

In mid-July 2014, another occupant in the building, G.H., who lives in the unit below the subject unit, contacted S.S. about S.T. and J.T.'s behaviour. He stated that he could hear a lot of fighting, yelling, screaming and stomping. He stated that something had been thrown out of the upstairs window and that the window had been broken. He further stated that the police had been called.

According to S.S., approximately one minute later, another tenant, A.C. called S.S. to report the same incident. A.C. lives in the unit across from the subject unit on the same second floor. A.C. reported that the police were in attendance and that he had observed S.T. and J.T. chasing each other around. He also stated that from his observations, both S.T. and J.T. had been drinking.

August 8, 2014

S.S. testified that he received further information from G.H. and A.S. regarding an incident on August 8, 2014. According to this information, J.S. was "running around with a baseball bat" and was involved in a violent altercation with three other people who were also armed with baseball bats. According to the information he was provided, J.S. and the other three people were fighting with baseball bats.

On August 19, 2014 the Landlord issued the Notice.

September 2014

On September 4, 2014, upon receiving the Notice, J.T. attempted to communicate with G.H. and his spouse S.P. He was, according to G.H. and S.P. intoxicated at the time. G.H.'s spouse, S.P. contacted S.S. According to S.S. she was screaming and shrieking with fear when he spoke to her on the telephone. G.H. then spoke to S.S. and G.H. stated that he had been threatened by J.T., that he had called the police and that he wished to move from the four-plex. He further stated to S.S. that he did not let his children watch violent television, yet there is violence all around them at home.

S.S. testified that G.H. then put J.T. on the telephone. At this time J.T. demanded an "extension". S.S. told J.T. to leave G.H. and S.P. alone as he was scaring them.

According to S.S., J.T. then began screaming and speaking a language S.S. did not understand.

The Landlord submitted a letter in evidence from G.H. which is dated September 5, 2014 and which confirms the telephone call of September 4, 2014. In this letter G.H. confirms that he wishes to vacate his rental unit. He writes that he is moving because of the violence in and around his address for the last five months. He further notes that he is sure it is “no safe place” for himself, his wife, and his two children, aged 6 and 4 respectively. In this letter, G.H. provides details about the incident on Thursday, September, 4th, 2014 and writes that he and his wife were accosted by the neighbour (he does not identify the neighbour’s name), who was drunk at the time. He writes that the neighbour insisted he write a letter in support of the neighbour. He writes that the neighbour spoke to the Landlord’s son, asking for more time to stay in the rental unit, and when that was refused the neighbour threatened him as follows:

- “[H]e was even more angry with me and said I will see what would happen to me, but is no just me is my family too, he mention Brown Power”

G.H. reported the above to the police and cites a police file number.

Also introduced in evidence by the Landlord was a photocopy of a business card and incident number from the RCMP which, based on the incident number quoted in G.H.’s letter and the incident number on the business card, appears to relate to G.H.’s report. On this photocopy, it is noted that J.T. was arrested for threatening and damaging the neighbours’ fence.

S.S. then contacted D.T. and again she stated that she could not control her son, J.T.’s behaviour.

According to S.S., the police have been called 8-10 times in the last three months as a result of J.T. and S.T.

TENANTS’ EVIDENCE

R.B., speaking on behalf of the Tenants denied the Landlord’s allegations. R.B. stated that S.T. is not able to drink alcohol because his “liver is so bad”. He denied that S.T. and J.T. drink together, or fight.

With respect to the baseball incident, R.B. testified that J.T. was attacked by a “few people” who attempted to take his phone. R.B. stated that J.T. was only protecting himself.

R.B. stated that the Tenants were aware that the window had broken, but that they did not know how this happened, and in any case paid to repair it without discussing it with the Landlord.

R.B. submitted that the Landlord’s allegations were “all lies” and that “this is all made up”.

R.B. stated that the police had been called, but it was only with respect to car parking. When asked directly if the police had ever been called due to S.T. and J.T. fighting, R.B. stated that the police were never called.

R.B. submitted that it was not believable that G.H. and S.P. were frightened by J.T. as they provided the phone to him on September 4, 2014.

Finally, R.B. testified that S.T. and D.T. had purchased a home and would be moving in on November 30, 2014. He indicated the Tenants were asking to remain in the rental unit until that time.

Findings

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Where the evidence of the Landlord and Tenants conflict, I prefer the evidence of the Landlord. The Landlord’s evidence is corroborated by the evidence of other occupants within the four-plex, one of which who has expressed such significant concerns for himself and his family that he has asked to terminate his own tenancy.

I accept the evidence of S.S. as to the conversations he had with G.H., A.S and A.C. regarding the drinking and violence associated with the Tenants, S.T. and J.T.

I also accept his evidence regarding the July 2014 incident wherein S.T. and J.T. were fighting and one of them, or a person permitted in the residential property by them, threw an item out the window.

Conversely, I do not accept the evidence of the Tenants that they had no knowledge of the circumstances surrounding the breaking of their rental unit window. They did not inform the Landlord of this incident and instead attended to the repair as well as paying the full cost. That the Tenants would have repaired the window without asking the Landlord to attend to this is not probable if it was not their fault.

I accept the evidence of S.S. as to the conversations he had with G.H., A.S regarding and the August 8, 2014 incident. I find that J.T. was involved in a violent altercation on the rental property with three other individuals all of which, including J.T., were fighting with baseball bats. I accept the evidence of S.S. that this incident was very frightening for the other occupants and that the other occupants are frightened of J.T..

I do not accept the evidence of the R.B. that J.T. was merely protecting himself with a baseball bat from an attempted theft of his cellular phone.

I accept the evidence of S.S. as to the conversations he had with G.H., A.S regarding the September 4, 2014 incident. I find that J.T. was attempting to coerce G.H. and A.S. into writing letters of support for J.T. I accept that J.T. was angered by S.S.'s refusal to immediately grant an "extension" to the Notice and that he threatened G.H. as a consequence. While G.H. does not identify J.T. in the letter submitted in evidence, I find that he was referring to J.T. based on the information he and A.S. provided to S.S. about the incident, as well as the handwritten notation on the photocopy of the RCMP business card wherein it is written that J.T. was arrested.

The Tenants denied any drinking and fighting, yet did not deny that J.T. threatened G.H. I accept the evidence of S.S. as to the conversations he had with G.H. and the letter written by G.H. and find that J.T. threatened G.H. on September 4, 2014.

I accept S.S.'s evidence that he has attempted to address all of the above concerns with D.T. and J.T. and that those attempts have been unsuccessful. I find that the Tenants continued to unreasonably disturb the other occupants in the rental building.

Analysis

Section 47(1)(d) provides as follows:

Landlord's notice: cause

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

(d) the tenant or a person permitted on the residential property 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
- (iii) put the landlord's property at significant risk.

After considering all of the written and oral submissions submitted at this hearing, I find that the Landlord has provided sufficient evidence to show that the Tenants have seriously jeopardized the health or safety or a lawful right or interest of another occupant.

A tenant has a lawful right to quiet enjoyment. Residential Tenancy Policy Guideline #6 notes as follows: "at common law, the covenant of quiet enjoyment "promis(es) that the tenant...shall enjoy the possession and use of the premises in peace and without disturbance." I find that J.T.'s behaviour towards the other tenants in the four-plex, and in particular, G.H. and his family, has interfered with G.H.'s lawful right to quiet enjoyment of the property.

I find the Tenants were provided sufficient warnings by the Landlord's son, S.S., to correct this behaviour. The tenants continued to unreasonably disturb the other occupants in the rental building and threatened one of the other occupants. I find the tenants have significantly breached the tenancy agreement and the *Act* by unreasonably disturbing other occupants in the building. Based on this conclusion, I find that the landlord has established sufficient cause to end this tenancy.

Therefore, I dismiss the Tenants' application to cancel the one month notice to end tenancy issued on August 19, 2014 and find that Notice is valid. The tenancy will end on September 30, 2014, in accordance with the *Act* and the Notice.

Conclusion

The Tenants' application to cancel a one month notice to end tenancy for cause is dismissed.

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: September 19, 2014

Residential Tenancy Branch

