



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CND, MNDC, RR, FF

Introduction

This hearing convened as a result of the Tenant's application for an Order cancelling a Notice to End Tenancy for Cause issued August 28, 2014 (the "Notice"). The Tenant also sought a Monetary Order in the amount of \$5,000.00, an order that the Tenant be permitted to reduce rent for repairs, services or facilities agreed upon but not provided and an Order to recover the filing fee.

The Tenant, the Landlord's agent, C.R., property manager, B.S. and building manager K.A. appeared, 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 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.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to a Monetary Order?
3. Is the Tenant entitled to reduce his rent?

4. Should the Tenant recover his filing fee?

Background and Evidence

The tenancy began on January 1, 2009. The rental unit is one of 55 units in an apartment building. The Tenant moved into his current rental unit on January 1, 2012. Rent in the amount of \$868.00 was payable on the first of each month and a security deposit of \$450.00 was paid by the tenant.

The parties agree that the Notice was served on the tenant indicating that the Tenant is required to vacate the rental unit on September 30, 2014.

The reason stated in the Notice was that:

- the Tenant or a person permitted on the property by the Tenant has put the landlord's property at significant risk;
- the Tenant has engaged in illegal activity that has, or is likely to:
 - damage the Landlord's property; and
 - adversely affected the quiet enjoyment security, safety or physical well-being of another occupant or the landlord; and,
- the Tenant has caused extraordinary damage to the unit/site or property/park.

LANDLORDS EVIDENCE

The Landlord testified that a previous arbitration occurred on March 24, 2014 dealing with the Tenant's application. The Landlord alleges that following this arbitration someone, or some persons in the building, began damaging and defacing the property as follows:

- repeatedly (3-4 times a week) removing the entry way paper sign which provides the manager's contact information;
- drawing pictures of male genitals on the above mentioned paper sign, as well as in the elevator and hallway in permanent marker;

- leaving egg shells, chicken bones, orange peels and banana peels, and other garbage around the building;
- sticking fruit stickers to the entry way glass, lights and windows throughout the building;
- breaking the glass on the advertisement sign within the elevator;
- pouring printer ink on the entry way carpet which resulted in a \$525.00 cleaning cost;
- removing the “Fire Safety Plan” from the building, which resulted in a \$280.00 fine during an annual inspection for failure to post this essential information;
- depositing peanut shells around the exterior of the building;
- damaging the laundry room door window; and
- leaving rotting meat under the entry way bench and fish under the matt in the entry way

(collectively referred to as “Acts of Vandalism”).

As a result of the above, the Landlord installed a security camera at the entry to the building. The Landlord testified that within two days of installing the security camera, they were able to capture images which confirmed it was the Tenant who was responsible for Acts of Vandalism.

Introduced in evidence by the Landlord was a warning letter dated August 22, 2014. The Landlord further testified that on August 26, 2014 (after reviewing the video) the Landlord confronted the Tenant about the Acts of Vandalism, after which no further similar acts occurred.

The Landlord submitted video and photographic evidence in support of their allegation that the Tenant has been defacing the property and was responsible for the Acts of Vandalism. In particular, the Landlord submitted the sign which had a drawing of male genitals, as well as photos of two other drawings within the building, namely, the elevator and on the second floor.

The Landlord testified that other occupants have been upset by the Acts of Vandalism and feel unsafe in the building.

VIDEO AND PHOTOGRAPHIC EVIDENCE

A review of the video evidence showed the following:

1. The Tenant removing the entry way sign;
2. The Tenant removing a pen from his pocket, and then drawing on the entry way sign. It appears from the Tenant's hand movements, that he is in fact drawing male genitals on the sign; and
3. The Tenant depositing what appears to be peanut shells at outside entry;

The Landlord submitted that the video also depicted the Tenant walking towards the entry way bench on the same day that meat was found under said bench.

I viewed the video, and while it is in fact the case the video shows the Tenant walking towards the bench, the bench is obscured and it is not possible to see if the Tenant deposits anything in that area.

K.A. testified that he viewed the video and that he believes it shows the Tenant "tossing something" in the area of the bench. He further testified that on the day in question another occupant called to advise that there was meat under the entry way bench. K.A. reviewed the video and testified that at 5:17 a.m. the Tenant was seen walking towards the bench and throwing something.

I reviewed the drawing of the genitals on the entry way sign, as well as the photos of similar drawings in the elevator and the second floor.

TENANTS EVIDENCE

The Tenant submitted that the March 2014 arbitration outcome was in his favour, and consequently does not support a finding that following this arbitration he would be upset enough to engage in the Acts of Vandalism.

The Tenant admitted to removing the entry way sign off the glass, but that he did so simply to obtain the property manager's phone number.

The Tenant denied any knowledge of the meat under the entry way bench.

The Tenant testified that he was not responsible for any of the alleged Acts of Vandalism.

The Tenant submitted that he has felt targeted and stated that he had lived in the building for six years without any problems. He further submitted that in 2012, his rent was reduced because he was such a good tenant.

Although the video clearly shows the Tenant drawing on the sign what appears to be male genitals, and depositing peanut shells outside the entry way, the Tenant denied such acts.

Analysis

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 tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

I find that the Acts of Vandalism began after the March 2014 arbitration and ceased after the Landlord confronted the Tenant.

I further find that the video evidence confirms the Tenant removed the sign from the entry way, which is consistent with the Landlord's evidence that the sign was removed 3-4 times a week.

I further find that the video evidence supports a finding that the Tenant drew male genitals on the entry way paper sign. The drawing on the sign, which was submitted in evidence, is consistent with the other drawings within the building, namely in the elevator and on the second floor, which were depicted in photos submitted in evidence.

I find that the Tenant deposited peanut shells at the outside entry way. I accept the Landlord's evidence that this is consistent with other refuse being deposited in and around the building.

I find, on a balance of probabilities, the evidence of the Tenant committing these acts, in conjunction with the timeline of events sufficient to find that the Tenant was responsible for the Acts of Vandalism. I accept the Landlord's evidence that the impact on other occupants of the Acts of Vandalism has been such that they feel unsafe within the building.

Therefore, I dismiss the tenant's application to cancel the one month notice to end tenancy issued on August 28, 2014. The tenancy will end on October 31, 2014, in accordance with the Act.

The Tenant provided no evidence, nor did he make any submissions, with respect to his claims for a Monetary Order in the amount of \$5,000.00, or an Order to reduce rent pursuant to section 65(1); accordingly, those applications are dismissed.

As the Tenant was unsuccessful, his request to recover the filing fee is similarly dismissed.

Conclusion

The Tenant's application to cancel the Notice 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: October 17, 2014

Residential Tenancy Branch

