



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, MNDC, MNSD, OLC, LRE, RR, O, OPC, ET, FF

Introduction

In the first application, made August 11, 2014, the tenant seeks to cancel a one month Notice to End Tenancy for cause dated July 18, 2014 and for relief in the nature of monetary compensation for alleged harassment and threats, an order that the landlord carry out repairs, a rent reduction and a restriction on the landlord's right of entry. At the start of hearing the tenant was permitted to amend his application to include a request for more time to make it, as the ten day time limit for challenging the one month Notice may have expired.

In the second application, made August 12, 2014, the landlord seeks an order of possession pursuant to the one month Notice and an early end to the tenancy.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that either party is entitled to any of the relief requested?

Background and Evidence

The rental unit is a six bedroom house.

The circumstances surrounding the start of the tenancy are vague. As best as can be determined by the evidence, the tenant had been living in a home rented from the landlord's sister. The sister or her property manager Mr. B. gave the tenant a two month Notice to End Tenancy for landlord use of property under s. 49 of the *Residential Tenancy Act* (the "Act"). The landlord's sister wanted the applicant tenant, her tenant then, to convenience her and move out as soon as possible. This landlord Ms. S.P., have this house for rent. Her property manager Mr. B.G. was somehow in contact with Mr. B. and arranged for the tenant to view this house. The tenant was given a key and viewed it on or about January 18, 2014. He immediately moved in. The landlord says he was not entitled to move-in without permission after viewing. The tenant says it was all above board.

The landlord Ms. S.P. states she was very upset with her property manager Mr. B.G. about this, but despite it all, she met with the tenant on January 20th and together they signed a standard form tenancy agreement. That tenancy agreement states the tenancy starts on January 18, 2014 on a month to month basis at a rent of \$1500.00 due on the seventh of each month. A \$750.00 security deposit was acknowledged.

A signed addendum reads:

The tenancy starts on January 18, 2014 but because of the nature of the tenant's change in address and the family relationship between the previous and current landlords, the rent is lower than it might normally be to compensate for the shortfall to the tenant from the previous tenancy. The tenant will also be given a period of time at the start of the tenancy free from paying rent. The first payment of rent is to be February 7, 2014.

From the evidence presented at hearing and most particularly a number of telephone conversations surreptitiously recorded and later transcribed and tendered by the tenant, between he and the landlord and her agent Mr. B.G., it is likely that the landlord, the tenant and Mr. B.G. were all of the understanding that the tenant would only be there for perhaps two months while re-arranged his affairs following a divorce. In making the January 20th agreement the landlord failed to note it.

The parties got along well for the first few months. They traded respectful text messages. However, for some reason not adequately explained by either side, the tenant brought with him from the old house, the locks, which he installed on this house. The landlord stated he did so without permission but I note that the move-in report attached to the January 20th tenancy agreement says "[t]enant will exchange locks with previous rental house."

The landlord did not have a key. She requested one from the tenant at various times and it appears that he was fully willing to give her one, but by June no key had been given.

In April the landlord wanted to show the home to a prospective purchaser. By text the parties arranged a convenient time for the tenant to let them in (the landlord had no key). The landlord says the tenant wasn't there to let anyone in. The tenant says he waited past the appointed time and then left.

In May the landlord's agent Mr. B.G. commenced discussions with the tenant about bringing his rent up to a market rent. I have viewed the tenant's transcripts and can agree that his "okay's) in various conversations might mean "okay I understand what you are saying" but in total the landlord had good reason to assume a new deal had been struck. The question of what the rent is now was not a question fairly raised by either application and so I decline to make any binding finding of fact about it without each side being given an opportunity to address that specific issue. The tenant has continued to pay the original \$1500.00 rent since the application was made, up to and including the rent due October 7, 2014.

In his conversations with Mr. B.G. the tenant appears to have consented to pay \$1900.00 per month for the months of June and July, 2014, then, for August \$2100.00, less \$100.00 in anticipation of him cleaning the gutters and then \$2100.00 thereafter commencing September 7th. The landlord sent the tenant a written addendum enshrining the new rents. The tenant returned it with notations requesting agreement about pets and occupants. He made notation about the new rents. He says he did so in an accompanying email but it was not submitted. The relationship then disintegrated.

On June 11th the agent Mr. B.G. called the tenant, who had paid \$1500.00 for the rent on June 7 as agreed, asking him to now transfer the remaining \$400.00. The tenant responded, declining to pay. He said that he'd talked to the Residential Tenancy Branch and felt he had a tenancy agreement and it says the rent is \$1500.00 and the landlord could not impose a rent increase like that.

Mr. B.G. reminded the tenant he initially was to stay only two months and then threatened that if the tenant backed out of the new rent arrangement he had no choice but "to move you out." He indicated to the tenant that he could evict him by obtaining a renovation permit from city hall or having the landlord

move back in. He indicated that if the tenant did not pay the new rent he would throw his “stuff” out and would lock the premises. Later in the conversation Mr. B.G. says he “can’t afford the property” at the low rent and the tenant must move out; “Either I get my rent or your [sic] out” and indicated he’d save the legalities of his actions for afterwards. “I’m not going to do it legally” said Mr. B.G. Mr. B.G. reminded the tenant that he’d agreed to the new rents. He indicates that he suspects the tenant is recording the call and that he’s been recording their conversations as well.

On July 7th the landlord Ms. S.P. called the tenant in an effort to arrange a showing. The tenant responded “B... (Mr. B.G.) has threatened me and I will not let you on the property.” Later in the conversation he indicated “I’m not letting anyone onto the property.” During the conversation the landlord indicated it will be she who comes to view the property. The tenant denied her. At hearing he testified that he considered her to be dangerous or a threat too. I find there was no reasonable basis for that position. The conversation ended with the landlord indicating she would send a notice so she could get into the property. The tenant replied “do whatever you think you need to do.”

Later on the same day Mr. B.G. called the tenant indicating he had prospective purchasers there and wanted to show the house. The tenant responded that Mr. B.G. threatened him, he felt unsafe and Mr. B.G. would not be allowed in the house. Mr. B.G. then suggested that just the prospective buyers (misdescribed by him as “renters” at one point) attend. The tenant states “I’m not letting anyone in this house.”

At that point Mr. B.G. descended to an extremely unprofessional level and threatened to break the tenant’s legs because the tenant was blocking a sale. Later in the call Mr. B.G. told the tenant that he would arrive with the police to get into the house. One would think that Mr. B.G. attending with the police would mollify any concern the tenant might have about Mr. B.G. conducting himself in an unlawful manner. Oddly, the tenant responded “They won’t do anything about it. The police have no jurisdiction over that.” Later in the conversation Mr. B.G. says “[w]e can blow the house. Anytime” and later “If I have to blow you’re a..., I have to blow you a...”

Later that day there was another conversation between the tenant and the landlord. It appears that the landlord was pleading with the tenant to let her prospective purchasers come to view the house, stating she would give him proper notice but was calling as a courtesy to arrange a time. The tenant indicates “I just want to make sure you’re ‘gonna [sic] give proper notice.” The landlord testified she served the required notice the next day, July 8th. The tenant denies receiving it. The showing did not take place.

On July 8th the landlord emailed the tenant again requesting a key. The landlord testified that she gave the tenant a “final notice” in writing and by email to given her spare keys by July 16th. The tenant says he did not receive either.

The landlord testified that on July 18th she served the one month Notice to End Tenancy by putting it under the entrance door handle. It is not clear who performed this task. The tenant says he did not get it until July 27th when his girlfriend found it outside. He provided a signed statement from his girlfriend to the same effect.

At sometime in this period the tenant applied black paper to a number of the windows in the home and large pieces of plywood over three windows. He claims the black paper is to reduce the light and the plywood is to facilitate an air conditioning vent. He has installed security cameras outside.

The tenant seeks permission to carry out repairs involving: gutter cleaning, a washing machine handle and door seal, a furnace filter, pull chain switches on three lights, the refrigerator, two burnt out light bulbs and a fourth that needs an extension pole to reach.

He testified that because of the threats from Mr. B.G. he has had to rent two storage units and seeks the cost of those and the related insurance cost.

He also sought an order permitting him to suspend his rental payments, but he has paid rent or an amount equivalent to rent each month since.

Analysis

I do not need to grant an extension of time for the tenant to apply to cancel the one month Notice to End Tenancy. The evidence is in contrast surrounding the date the notice was placed between the tenant's door and door handle. As Mr. B.G. appears to have been in the picture at that time (he is no longer the landlord's property manager for this property) and in light of his admitted willingness to ignore the law, I am not prepared to find the document was put there before July 27th. Such service is deemed to be effective three days after "attachment" to the door, giving the tenant ten days, until August 10th to apply. August 10th was a Sunday, a holiday, and so, by the provisions of the *Interpretation Act* he had until the next business day to apply to cancel the Notice. He applied on Monday, August 11th.

The ending of a tenancy is a very serious matter and the landlord will be required to comply strictly with the law and rules surrounding eviction. A landlord alleging cause must provide cogent, convincing evidence of the grounds alleged.

The landlord's Notice to End Tenancy was given pursuant to s. 49(h) of the *Act*, which provides that a Notice may be given if:

- (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;

Her application for an order of possession particularizes the grounds for the allegation. It states that tenant changed the locks without permission and refused to give her spare keys. At hearing she stated there were two reasons for the Notice; 1) that the tenancy agreement was only for two months and, 2) after the two months she wanted the real rent.

The landlord's reasons given at hearing do not relate to the grounds given in the Notice and for that reason cannot be entertained as cause to evict. In any event, the written tenancy agreement; the lawfully binding document, contradicts the landlord's assertion. It indicates that the tenancy was not limited to two months. The question arises; how long was the tenant to be given the lower rent as compensation "for the shortfall to the tenant from the previous tenancy?" But it is clear the "Length of Tenancy" box in the agreement has "month to month" checked off.

The landlord cannot end the tenancy under s. 49(h) because the tenant is not paying the rent she thinks he ought to be paying.

In regard to the locks, the landlord has not proved the tenant changed the locks without permission. It may be that he had no permission to take the locks from the prior house and install them in this one. It may be that he had apparent authority to do so from one of the managers. The move-in report states that he will "exchange the locks" as he did and in my view that settles the question. The landlord cannot argue that the tenant changed the locks without permission. The landlord should have obtained a key immediately but that appears to be neither party's fault. The tenant's suggestion that the landlord already had one or could get one from the previous landlord or one of the property managers was mere speculation on his part and goes against her repeated attempts to obtain one from him.

In my view, in these unusual circumstances the tenant changing the locks as per the move-in report and six months later refusing to give the landlord a key, do not establish a "breach of a material term of the tenancy agreement." The landlord's proper remedy might have been to engage a locksmith and on notice to the tenant, have the locks rekeyed and a new key tendered to the tenant. Had the tenant changed the locks without permission and refused the landlord a key in the circumstances before me, my decision would have been different.

In result, the landlord's Notice to End Tenancy was not valid. She has not shown that the tenant breached a material term of the tenancy agreement and failed to rectify it after being given written notice to do so.

The landlord's Notice to End Tenancy might well have been given for the tenant's refusal to permit entry. Since I have heard this evidence and since this tenancy will continue, at least for the short term, I wish to note that while the tenant may have reason to request that Mr. B.G. not attend the premises, given the threats in the phone calls, there was no reason to refuse Mr. B.G. entry with the police, nor to refuse the landlord herself or any other of her agents. The tenant's suggestion that she too would conduct herself in an unlawful manner was, to me, fabrication. Her manner towards the tenant, as shown by his telephone transcripts, was lawful, cooperative and conciliatory.

In that regard, the tenant submitted a statement from Ms. L.B., a former tenant of this landlord's and who lived next door until she was evicted in late July or early August, 2014. Ms. L.B. alleges that the landlord evicted her without serving her with an order of possession. It is clear that in order to evict Ms. L.B. the landlord had to go to the extreme of retaining a bailiff. Had this tenant been concerned about the landlord Ms. S.P. taking shortcuts around the law, this fact should have allayed them. I find it unlikely that a landlord would proceed to incur the extraordinary, often unrecoverable expense of obtaining a writ of possession from the Court and retaining a bailiff to enforce it without first serving the tenant with the order of possession in hope of compliance and the avoidance of considerable expense. I give no credence to the statement of Ms. L.B.. She was lawfully evicted by this landlord.

I find that the tenant has substantiated a claim that the landlord, through her agent Mr. B.G., breached his right to quiet enjoyment by unreasonably disturbing him with threats of bodily harm and unlawful eviction tactics. The landlord pestering him for a key was not harassment, nor was Mr. B.G.'s negotiations about higher rent. Mr. B.G.'s conduct regarding physical harm and extrajudicial methods to evict the tenant were harassment and were unprofessional and improper. They cannot be countenanced even in the circumstances here, where the tenant broke the verbal agreement the two had made regarding rent and renounced the understanding regarding the short term nature of his tenancy at the lower rent.

I find an appropriate compensation to be \$100.00. After the first of Mr. B.G.'s outbursts on June 11th, the tenant reported to the landlord that he was "a little upset with (Mr. B.G.)" that he'd threatened to steal the

tenant's property, indicative that Mr. B.G.'s conduct was perhaps a mild irritant. The second instance, on July 7, involving the threat of physical harm, was immediately tempered by Mr. B.G. saying he would be arriving with the police to let him in. The tenant's following conversation with the landlord appears to be about Mr. B.G. coming over immediately to show the house without giving proper notice; the lack of notice being the concern. That is indicative to me that Mr. B.G.'s extraordinary conduct was not taken seriously by the tenant.

I dismiss the tenant's claim for repairs and a rent reduction, with leave to re-apply. A tenant requesting repairs to the rental unit is obliged to inform the landlord of the problem and permit the landlord to inspect and confirm the repair. It is the landlord's duty to have the repair attended to in a timely manner. The tenant has not done so in this case. As has been stated he was not and is not justified in refusing entry to the landlord, her agents or workmen. Mr. B.G. is now no longer an agent. Once the tenant has followed these steps he will be in a position to assess whether or not he has a claim or claims about repairs against the landlord.

I dismiss the tenant's claim for an order permitting a lock change or to suspend or put conditions on the landlord's right of entry. If the tenant fails to provide the landlord with a key to the premises upon receipt of this decision, the landlord is at liberty to proceed on notice to the tenant to change the locks at her own expense and provide the tenant with a key.

I dismiss the tenant's claim for return of the security deposit. That is a matter to be dealt with at the end of the tenancy.

I dismiss the tenant's claim for the cost of storage units and contents insurance. He has not shown on a balance of probabilities that Mr. B.G.'s June 11th threat to enter and remove his property was a serious threat that should warrant such a drastic remedy. By the end of July and receipt of the landlord's Notice to End Tenancy, it would have been apparent to the tenant that she was proceeding to evict him by lawful means.

Conclusion

The Notice to End Tenancy dated July 18, 2014 is cancelled. This tenancy continues. The tenant's claims regarding repairs are dismissed with leave to re-apply. The remainder of his claim is dismissed.

The landlord's claim is dismissed.

I permit the tenant recovery of \$50.00 of his filing fee. I authorize him to recover that amount plus the \$100.00 award, totalling \$150.00 by reducing his next rent due by \$150.00 in full satisfaction of the award and 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: October 24, 2014

