



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cottyn Construction
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy – Section 47;
2. A Monetary Order for compensation - Section 67;
3. An Order for the Landlord compliance - Section 62; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenants were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to an order that the Landlord comply?

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The current tenancy started on September 1, 2011 however one of the Tenants at the time occupied the unit under previous tenancy agreements. On August 31, 2014 the Tenants were given a one month notice to end tenancy for cause (the “Notice”). The Notice sets out that the Tenant or a person permitted on the property by the Tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The Landlord states that the Tenants harassed another tenant ("tenant X") by making baseless and exaggerated complaints to the Landlord. The Landlord states the Tenants past behavior has caused two other tenants to end their tenancies as well. The Landlord provided a copy of a complaint made by the Tenants and a note from the previous tenant being complained about indicating that this tenancy ended due to the Tenants' complaints of noise from this tenant and his child and because the Tenants threw a lit cigarette at this tenant.

The Landlord states that the Tenants have reported tenant X to the police and to child protection services several times without any basis. The Landlord believes that the Tenants left graffiti on the walls beside the unit of tenant X. The Landlord states that this belief is based on the drawing of a pentagram and one of the Tenant's repeated reference to tenant X's daughter as a "devil child".

The Landlord states that they have investigated several times including listening for noises in the hallway of tenant X but have never heard anything out of the ordinary except for once in a short outburst that lasted seconds. The Landlord states that no other tenants have complained about the tenant. The Landlord states that discussions with tenant X and the police indicate nothing beyond tenant X and her child having short outbursts which can be normally expected in a family setting. The Landlord states that the Tenants exaggerate their complaints as evidenced by one of their reports that tenant X's child was defacing a fence with profanities. The Landlord states that the child had written "have a great day" in chalk that washes away with rain and provided a photo of the fence.

The Landlord states that the Tenants threatened the Landlord with making the Landlord's "life a living hell". The Landlord states that they were in the hallway outside the Tenants unit with a video when the Tenants called the police and accused the Landlord of looking into the Tenant's unit through the peephole. The Landlord states that the police told the Landlord to not be on the Tenant's floor until the dispute was resolved. The Landlord states that the video of the incident shows the Landlord's frustration level by the foul language used by the Landlord.

The Tenants state that for the past year they have been subjected to significant and ongoing noise from tenant X's unit and state that tenant X argues violently with her 12 year old child. The Tenants state that they hear the words being used in the arguments followed by loud bangs, thuds and the daughter yelling to stop being hit. The Tenants states that the disturbances are not normal or short outbursts and that tenant X has told them that the youth kicks the walls. The Tenants point to the Landlord's report of an incident that occurred on August 29, 2014 when another tenant heard tenant X "yelling and berating" the youth followed by door slamming. The report notes that the incident last approximately two minutes. The Tenants submit that the Landlord has not taken their complaints seriously and have failed to protect their right to quiet enjoyment of the unit. The Tenants state that they first called the police in February 2014 and have called them a total of nine times since then. The Tenants state that they have also called child protection services.

The Tenant agrees that they called the police to report the Landlord when the Landlord was closely following the Tenants and recording them. The Tenant states that the Landlord was screaming profanities and laughing so they called the police. The Tenant states that this incident occurred the day the Tenants served the Landlord with documents for this dispute hearing.

The Tenants state that they are not prepared to move out of the unit as they have not looked for another rental unit.

Analysis

Section 47 of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy where 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, or
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Where a notice to end tenancy comes under dispute, the landlord has the burden of proof. Harassment is defined in the Dictionary of Canadian Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”.

It can be accepted from the evidence of both Parties that loud arguments and noises emanate from tenant X's unit. It can also be accepted that two agencies have been called to investigate for issues related to the noise however there is no evidence that the noise arises from anything criminal or requiring protection services. I also accept that the Landlord has investigated the noise complaints from the Tenants and have found them to be at minimum short outbursts that could be considered normal or usual behavior within family units. I note that the report from another tenant about the argument coming from tenant X's unit is not a complaint about the noise from tenant X's unit but a response to the Landlord's investigation of noise levels and duration.

It is not difficult to accept that the Tenants exaggerate given their report of the youth defacing a fence with profanities and the photo of the fence. I am also concerned and accept the evidence from the previous tenant who ended the tenancy due to the Tenants complaints and provocative actions. Considering that the Tenants provided no supporting evidence to substantiate that any person beyond themselves experienced or complained of unreasonable noise from tenant X's unit, I find on a balance of

probabilities that the Landlord's have substantiated that the Tenants are prone to expressing outrage over relatively minor incidents and have made exaggerated complaints about the noise coming from tenant X's unit. Given these reasons and considering the Tenants' evidence of repetitive reports to the Landlord and other agencies about tenant X, I find that the Landlord has substantiated on a balance of probabilities that the Tenants have, if not harassed tenant X, have at a minimum behaved in a manner that significantly interfered with or unreasonably disturbed tenant X and the Landlord. As such I find that the Notice is valid and the Tenants must move out of the unit.

Although the Tenant claims compensation given that the Landlord investigated the Tenants complaints I find that the Landlord did not act negligently in carrying out their duties and I dismiss the claim for compensation. As the tenancy is ending, I dismiss the claim for an order that the Landlord comply. As the Tenants have not been successful with their application, I decline to award recovery of the filing fee.

Section 55 of the Act provides that where a tenant's application to dispute a landlord's notice to end tenancy is dismissed and the landlord makes an oral request for an order of possession, the request must be granted. As the Tenants' application has been dismissed, I grant the Landlord's request for an order of possession. I make this order of possession effective November 31, 2014 in order to provide the Tenants with reasonable time to obtain a new tenancy.

Conclusion

The Tenants' application is dismissed.

I grant an Order of Possession to the Landlord effective 1:00 p.m. on November 31, 2014.

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

Residential Tenancy Branch

