



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation, Property Management Div.
and [tenant name suppressed to protect privacy]

AMENDED DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

The tenant submitted a CD on which he had placed digital files. At the time of the hearing I was unable to view those files, but after the hearing I was able to access those files and have considered them in my deliberations.

The landlord submitted documentary evidence to the Residential Tenancy Branch after the hearing had concluded. As the tenant did not have the opportunity to respond to this evidence, I did not consider it.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The tenancy in question is one which at the time of the hearing, had lasted for 29 months. The parties agreed that on August 22, 2014, the landlord served on the tenant a one month notice to end tenancy for cause (the "Notice"). The Notice alleges that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, has caused extraordinary damage to the unit or property and has breached a material term of the tenancy and not corrected that breach within a reasonable time after having been given written notice to do so.

The landlord testified that in September 2013, the tenant was served with a one month notice to end tenancy for cause because he had caused other tenants to be uncomfortable, had urinated in the hallway and damaged the carpet by cleaning it with bleach and had been intoxicated in common areas of the building. The landlord testified that they spoke with the tenant, secured his apology and promise to behave more appropriately and rescinded that notice. The landlord submitted a copy of a letter dated September 12, 2013, signed by the tenant, in which the tenant confirmed his understanding that should future reports of disruptive conduct be received, he would face eviction.

The landlord testified that the tenant behaved for a short period of time but soon began behaving inappropriately again. The landlord submitted copies of incident reports and complaints dating back to August 24, 2013. I have not considered complaints prior to the issuance of the September 2013 notice to end tenancy as those complaints were resolved when the landlord agreed to rescind the notice. The complaints not considered include an allegation of the attempted theft of doors, intoxication in the lobby, following other occupants of the building from the laundry room to their suite, the first incident of bleaching the carpet, loud banging on his apartment door and making hammering noises.

The landlord submitted a copy of an incident report dated October 2013 in which the tenant allegedly tried to force his way into another apartment. The landlord alleged that the tenant was identified as the perpetrator and that the police warned him not to bother the other occupant again. The tenant denied having anything to do with this incident.

The landlord submitted a copy of a written complaint dated July 1, 2014 in which an anonymous occupant complained that the tenant "spent a significant amount of time harassing [sic] a tow truck driver in a state that looked a lot like an acid or mushroom trip." The tenant denied this incident and expressed offence at being accused of being "on a trip".

The landlord testified that in July 2014, she received a significant number of complaints from other occupants of the building about the tenant making loud banging noises at night and urinating in the hallway. The landlord submitted a written anonymous statement from a female tenant who claimed that the tenant made sexual overtures to her in an elevator, causing her to feel uncomfortable. The tenant denied having had such an encounter.

The landlord manager and her husband both testified that someone repeatedly urinated in the hallway outside the rental unit and the husband observed the tenant bleaching the carpet in order to cover the smell. The tenant denied having urinated in the hallway and

suggested that the landlord may in some way be involved because she wanted to establish reason to end his tenancy. He acknowledged that he had bleached the carpet, but testified that he needed to do so because the landlords did not remove the odour. The tenant testified that he has performed significant improvements to the rental unit and theorized that the manager wants to evict him because currently, her adult children live on different floors of the apartment building and she wants them to live on the same floor as her, which is the floor on which the rental unit is situated. The manager denied wanting to move her children to the same floor and testified that a recent vacancy on that floor would have given her opportunity to do so had she had that desire.

The landlord manager testified that in the morning of August 22, she found the tenant in the lobby and he appeared to be intoxicated. The landlord testified that she learned the tenant was waiting to use the swimming pool and she told the tenant that he could not use the pool while intoxicated and instructed him to return to the rental unit. Shortly thereafter, the tenant came downstairs wearing nothing but a jacket. The landlord brought the tenant up to the rental unit. The tenant denied having gone through the building in a state of undress and testified that he takes prescription pain medication and muscle relaxants which may give him the appearance of being intoxicated. He strongly denied ever having been intoxicated in public. The manager further testified that when she returned to the building on the evening of August 22, she discovered that someone had urinated in front of her door. She strongly believes that it was the tenant who did this. The tenant denied having urinated in front of her door.

The tenant argued that the letters from other tenants should not be admitted into evidence as they are anonymous. He further argued that the landlords have never given him written warnings that he was engaged in any inappropriate behaviour and should have done so before proceeding to issue the Notice.

The landlord manager testified that on one occasion, she overheard the tenant tell her husband that the shopping bag he was carrying would fit on her husband's head and she took that statement to be somewhat threatening. The tenant vehemently denied having made any such statement. The manager's husband, T.F., testified that the tenant lifted up the shopping bag and said to him, "this would fit perfectly over your head." After hearing the husband's testimony, the tenant had nothing further to say about the shopping bag incident.

Analysis

The landlord bears the burden of proving on the balance of probabilities that they have grounds to end the tenancy. As stated earlier, I have not considered events which

occurred prior to the issuance of the September 2013 notice to end tenancy as these issues were resolved and documented in the September 12, 2013 letter.

Where the evidence of the tenant and the landlord conflict, I prefer the evidence of the landlord and the witness T.F. While the shopping bag incident really had no relevance to this case, the tenant denied having made any comments about fitting the bag over T.F.'s head when the landlord alleged having overheard the comment, but was rendered silent when T.F. himself testified and the tenant did not allege that T.F.'s account was inaccurate. The tenant postulated a theory that the manager and her family were manufacturing evidence to create an appearance of cause for eviction, suggesting that they were somehow responsible for the urine continually found outside his door. The tenant provided no evidence to support this theory and I do not accept that this conspiracy has occurred.

I find it more likely than not that the tenant himself is urinating outside his door. The tenant repeatedly asked me why he would do so and for that I have no answer, but the fact that the tenant repeatedly cleans and bleaches the area despite having been served the September 2013 eviction notice in part for that very action suggests that he feels a responsibility to clean the area and recognizes that the consequences for urinating in the hallway may be more severe than for bleaching the carpet.

I am very troubled by the tenant's actions of August 22. Regardless of whether he was intoxicated by alcohol or prescription drugs, I find it more likely than not that the tenant came down into the common area of the building and exposed himself and I further find it more likely than not that the tenant urinated outside the door of the manager and her husband. It is clear that the management of this building has given the tenant considerable latitude and the August 22 incident was sufficiently grievous to serve as the proverbial straw that broke the camel's back. I find it highly unlikely that the manager would lie about this incident.

I find on the balance of probabilities that by urinating in the hallway and exposing himself in common areas of the building, the tenant has unreasonably disturbed other occupants of the building as well as the landlord. I find that the landlord has established grounds to end this tenancy and for that reason, I decline to set aside the Notice.

As the effective date of the Notice has already passed, I find it appropriate to order that the tenancy end on November 30, 2014. The tenant should pay rent as usual for the month of November.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord,

I must issue an order of possession when I have upheld a notice to end tenancy.
Accordingly, I so order. The tenant must be served with the order of possession.
Should the tenant fail to comply with the order, the order may be filed in the Supreme
Court of British Columbia and enforced as an order of that Court.

Conclusion

The tenant's claim is dismissed. The tenancy will end on November 30, 2014 and the
landlord is granted an order of possession effective on that date.

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 30, 2014

Residential Tenancy Branch

This decision is amended pursuant to section
78(1) of the Residential Tenancy Act this 17th
day of November, 2014.

