



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for cause.

The tenant and the landlord attended the hearing, and each gave affirmed testimony. The landlord also called two witnesses, and the tenant called one witness, who all gave affirmed testimony. The tenant also provided evidentiary material in advance of the hearing, and the parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

During the course of the hearing the tenant stated that he had received no evidence from the landlord, however, none has been received by the Residential Tenancy Branch, and the only evidentiary material considered in this Decision is the material provided by the tenant. No other issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the landlord established that the notice to end tenancy was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began in February, 2009 and the tenant still resides in the rental unit. Rent in the amount of \$1,050.00 per month is payable in advance on the last day of each month for the following month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$525.00 which is still held in trust by the landlord and no pet damage deposit was collected.

The landlord further testified that she received a phone call from a neighbour around the end of August, 2014, who is not a tenant and resides on property that is not owned by the landlord. The neighbour complained about the landlord's tenant stating that the tenant causes major trouble to the neighbour's 8 year old child, causing the neighbour a

lot of stress. The neighbour, who has resided next door to the rental unit for about 3 years, complained of the tenant's disturbances by swearing and yelling at the neighbour and the neighbour advised the landlord that the neighbour cannot live next to the tenant. The neighbour told the landlord to get rid of the tenant and the landlord refused. The neighbour was very upset with the landlord and the parties hung up on angry terms; the neighbour did not like the landlord's response. The landlord has limited knowledge of the disturbances described by the neighbour and they didn't talk long, and the landlord testified that the neighbour has not liked the tenant since the neighbour moved onto the neighbouring property. The landlord sent a text message to the tenant who responded by saying that the neighbour and the tenant had some sort of altercation and the police were called, but the landlord does not know who called police.

The landlord received a letter from the neighbour's legal counsel near the beginning of September, 2014 stating that a law suit may be filed against the landlord in small claims court to get the tenant out of the rental unit because the tenant is disturbing the peace. The letter states that the landlord has done nothing about the on-going nuisance of the tenant, and asks the landlord to contact the legal counsel with a proposal to end the tenant's harassing and threatening behaviour by September 19, 2014, and that the legal counsel has instructions to commence legal action. The landlord contacted the Residential Tenancy Branch who told the landlord that because the landlord is being taken to Court, the landlord has cause to issue a notice to end the tenancy to the tenant. The landlord has not been served with a Notice of Claim in small claims court by the neighbour or counsel.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause on September 30, 2014 by personally handing it to the tenant, and testified that she waited till then to give the tenant one full month of the tenancy. A copy of the notice has been provided for this hearing and it is dated September 30, 2014 and contains an effective date of vacancy of October 31, 2014. The reason for issuing the notice is: "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord." The landlord also gave the tenant a copy of the letter from the neighbour's legal counsel at that time.

The landlord's first witness testified that she is a neighbour of the tenant and has been going through a lot of things with the tenant. The witness went to the landlord wanting the landlord to do something about the tenant because the witness' son is 8 years old and is afraid to play in the yard. The witness and her family are uncomfortable sitting outside for dinner because the tenant would come outside or yell through the window at the witness' family calling them names. The witness spoke to the landlord only on the one occasion, wanting the landlord to at least talk to the tenant and told the landlord that the witness wanted the landlord to evict the tenant, but the landlord felt she couldn't do anything.

The witness testified that the problems started on July 30, 2014 when the witness' dog barked and the tenant enticed a fight, made references to the witness' body parts and her husband's penis. Police were called but the tenant wasn't home when the officer

attended. The witness kept a journal of events, and read from it further incidents recorded from July 31, 2014 to October 24, 2014, including rude and vulgar gestures and language, threats and enticing fights.

The landlord's second witness is also a resident on the neighbouring property and testified that the main problem he has with the tenant is his vulgar and insulting name calling toward the witness' wife and daughter. The witness told the tenant to stop, but the tenant enticed a fight with the witness. On one occasion, the witness was putting out the garbage and the tenant said to him that if the witness even looked over at the rental property, the tenant would kick his ass. The witness did not respond.

The tenant testified he has never threatened the neighbour but admits that the parties had a confrontation. The ladies on that property told the tenant they were going to get the tenant evicted and that they had enough money to do so, and they believe they run the street stating they will decide who lives in the rental unit next. He further testified that the yelling was back and forth from both sides of the fence and the tenant didn't enjoy his yard either. The tenant hasn't been in the back yard all summer. The neighbours' dogs are vicious and run hard at the fence. The tenant called the SPCA who attended, but the tenant was not there at the time. The tenant believes that a taller fence was installed by the neighbours because of the vicious dogs.

The tenant also testified that if he stays in the rental unit he will absolutely be able to get along with the neighbours and the difficulties will not escalate in the future.

The tenant's witness testified that she resides on the rental property and was present in the back yard of the rental unit with her son, who dropped a toy about a meter from the fence separating the yard of the rental unit from the neighbours' yard. The neighbours' dogs charged violently barking, both at the same time. The tenant was outside at the time, the witness' son was scared, and the neighbour started to swear under his breath. The witness went inside because the neighbour started to swear.

The witness also testified that the neighbours stand and stare at the tenant and the witness through the fence, listening, as though to provoke a fight. The witness has observed the neighbours running down the tenants because they are renters and poor, and can hear the swearing under the neighbour's breath, most of which she can't hear but does hear the tenant's name.

Analysis

Where a tenant disputes a notice to end a tenancy issued by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the notice, and I find it is in the approved form and contains information required by the *Act*.

With respect to the reason for issuing the notice, the *Residential Tenancy Act* states, in part:

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 by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property

In this case, I am not satisfied that the neighbours are entirely innocent of wrong-doing and I find that both parties have resorted to poor behaviour. Further, the *Act* states that a landlord may end the tenancy if the tenant has unreasonably disturbed another occupant or the landlord of the residential property. The neighbours are not resident on the rental property, there is no evidence of other occupants on the residential property, and the landlord has not been disturbed. Therefore, I am not satisfied that the landlord has established that the reason for ending the tenancy, or the cause set out in the notice complies with the *Act*, and the notice must be cancelled.

Conclusion

For the reasons set out above, the notice to end tenancy issued on September 30, 2014 is hereby cancelled and the tenancy continues.

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: November 28, 2014

Residential Tenancy Branch

