



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Aparwood Senior Citizens Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

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 and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord society attended the call, each gave affirmed testimony and each party called one witness who gave affirmed testimony. The parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other, and 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.

No 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*, and more specifically with respect to the reasons it was issued?

Background and Evidence

The landlord's agent testified that the contents of the letter provided by the agent for this hearing are true. The document states that the landlord denies the allegations made by the tenant in the tenant's evidence package. He further testified that one of the breaches of the tenancy agreement is the tenant failing to have postdated cheques available to the landlord.

The landlord's agent has also witnessed continuing conflicts and has provided a letter signed by 26 of the 39 other occupants in the complex all saying that they are in fear and as a result cannot go outside their respective rental units. The police have also been called. Three occupants were moved to the other side of the street at the landlord's expense so there would no longer be any conflicts. The locks on the laundry rooms were also changed due to the tenant's failure to abide with the rules which state

that each tenant does laundry on specific days and hours and the tenant got into a fight with another occupant. The landlord's agent stated that there have been numerous instances, and he has sat on the board since about May, 2014.

The landlord's agent also testified that a meeting was held that was not attended by all board members and was done illegally and without the permission of board members even though the meeting was called by the chair. The tenant recorded the meeting illegally and without anyone's knowledge.

The landlord's witness testified that she has been the administrator of the landlord society since October 1, 2012 but does not live on the rental property and works there on an as-and-when required basis. She is a non-voting board member.

The witness further testified that this month-to-month tenancy began on November 1, 2010 and the tenant still resides in the rental unit. Rent in the amount of \$357.00 per month is payable in advance on the 1st day of each 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 \$161.00 as well as a pet damage deposit in the amount of \$161.00 and both deposits are still held in trust by the landlord. A copy of the tenancy agreement has been provided.

The landlord's witness also testified that the tenant was served personally by the landlord's agent with a 1 Month Notice to End Tenancy for Cause on November 3, 2014 and police were present. A copy of the notice has been provided and it is dated November 3, 2014 and contains an expected date of vacancy of December 31, 2014. The reasons for issuing the notice are:

- 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;
 - put the landlord's property at significant risk;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord's witness testified that the tenant sprayed hairspray in the face of another tenant, and that tenant has provided a letter dated March 17, 2014 which states that the writer is not sure what the spray was but caused his eyes to burn. The landlord's witness believes that the alleged incident took place in July, 2013.

The landlord's witness also testified that the tenant has put the landlord's property at significant risk by leaving the rental unit for an extended period of time in December, 2013 when the temperature got down to -39 degrees. Two rent receipts were found in the tenant's door, which are only issued monthly, so it is believed that the tenant was away for several weeks. The tenant also turned off the breaker to the hot water tank,

and the electrical and plumbing systems serve 3 other units which would also be affected by water freezing.

The landlord's witness also testified that the tenancy agreement requires the tenant to provide 4 post dated cheques at a time. In February 2014 the tenant provided a letter to the landlord without providing the post dated cheques and the tenant has never said why.

The landlord's witness also testified that there have been lots of complaints about the tenant from other occupants about the tenant doing laundry whenever she wants, and others fear for their lives because they have heard the tenant had an altercation with her ex-husband, and another occupant who used to live near to the tenant got into several altercations with the tenant. Three other occupants have been moved across the street by the landlord at the landlord's expense to attempt to find peace within the rental complex. They complained of the tenant banging doors, calling them names, swearing, stalking them and taking pictures of them. The witness recalls one situation in January, 2013 when the tenant had a fight with another occupant in the laundry room the witness was called and the tenant accused the other occupant of attacking her. The tenant was taking pictures of the other occupant and the witness got between them and sent both a letter reprimanding them.

The witness sought advice from a lawyer who recommended that the witness contact the police to let them know because the police had been called on several occasions and wanted to give the landlord's agents an escort when the notice to end the tenancy was served on the tenant. The situation has been extremely stressful and other occupants constantly complain to the witness because they are afraid of the tenant's unpredictability. The tenants are all seniors and cannot enjoy their respective rental units. The witness gets calls every day questioning how the board is going to resolve the complaints. A number of tenants have signed a letter, a copy of which has been provided for this hearing, showing their on-going concerns. When the tenant is not on the complex, the other occupants go outside and enjoy themselves until the tenant's car returns. They are all frightened.

The witness also testified that while conducting a suite inspection in the rental unit the witness saw boxes against the baseboard heaters, which the witness states is a fire hazard. The witness sent a letter to the tenant on February 28, 2013 asking to ensure they were unpacked and gone. An inspection was scheduled in April, 2013 and the tenant wanted to video it but a board member didn't agree, so it was rescheduled when the chairman could complete it. All boxes and bins were still piled up along the baseboard heaters and the witness made a note of it on the inspection sheet.

The witness has absolutely done everything she can to resolve the issues and even after moving 3 other tenants at the landlord's expense the tenant still got into another altercation with another occupant in August, 2014. The tenant picked a fight in a different laundry room than used by the tenant, and on August 30, 2014 that occupant wrote a letter to the landlord, and a copy has been provided for this hearing.

The tenant testified that with respect to providing the landlord with post-dated cheques, the tenant researched it on the internet and for this Province a landlord may request them, but the tenant made a submission to the board who agreed to look into the legality of it and the fairness because some residents pay in cash, including the tenant sometimes. The tenant's submission to the board included a statement that the tenant didn't have a chequing account or a job. The board never got back to the tenant about the decision. The tenant provided postdated cheques until June 1, 2014, but has not provided them in the past and it was a non-issue for 4 years. The tenancy agreement says 4 months, and not every 4 months thereafter.

The tenant also testified that when she is away a friend checks on the rental unit weekly. A plant in the rental unit sits in front of the windows and it has not frozen. The thermostat was set to 8 or 10 degrees to keep costs low. When the landlord's agents entered the rental unit they also turned on the hot water tank but didn't notify the tenant or the tenant's contact person.

The tenant further testified that she has never gone into the laundry room when it was not her scheduled time, but the previous policy was that tenants could use it if it was empty and the scheduled time wasn't there to be restricting, but was to ensure they would get a time, and the policy has been changed a number of times. The tenant had on-going conflicts every time she went into the other laundry room, and has not entered that room since the locks were changed. The tenant does not know most of the tenants who signed the complaint letter provided by the landlord.

The tenant further testified that the inspection mentioned by the landlord's witness was well over a year ago and that some of the accusations are on dates when the tenant wasn't even at the rental complex. In other letters of tenants, the writers weren't present for the incidents they describe. They were documenting things, so the tenant did as well by taking photographs on the advice from police, but never taken through other tenants' windows. One of the tenants continues to bother the tenant by entering the laundry room up to 3 times in one session of the tenant doing laundry and brings in dogs, touches the tenant's laundry, talking about the tenant putting unmentionables in the dryer and other rude things. The tenant does not know why 3 other tenants were moved, but they wanted the landlord to throw the tenant out without any grounds. The gossip is out of control and the tenant's concerns have never been met.

The tenant also attempted to have a meeting with the landlord's agent but was told it wasn't possible. The landlord's agent wrote to the tenant saying that if there were no further incidents, there wouldn't be a problem continuing the tenancy. The landlord's witness said that the tenant could meet with the board, but within 2 days of that conversation the tenant received the notice to end tenancy.

The tenant's witness testified that she frequently goes to the tenant's rental unit when the tenant isn't available, and when the tenant is away the heat is usually turned down to between 8 and 10 degrees. The witness also testified that the tenant has not kept bins or boxes against baseboard heaters, but there are some on the same wall as the

cupboard. The rent receipts or any other documentation in the door was put back there when she'd leave.

The witness further testified that she was present at a meeting on March 11, 2014 wherein a conversation took place about postdated rent cheques. The tenant talked to a board member about it being legal and that more research was required because of the tenancy agreement; that it was not laid out properly. The witness also delivered rent cheques to the landlord for the tenant from different accounts and the landlord said that it was fine. The meeting was recorded by the tenant with permission and the recording device was on the table so everyone could see it. The non-official board meeting was held with only one board member present, and was intended to be a meeting for residents to attempt to come to a resolution.

The witness also testified that one of the tenants who had complained followed the witness, so the witness confronted him and told him to stop stalking, and he started yelling saying that the witness was crazy and should go to a mental unit like the tenant. The tenant and the witness attended the police station, and the police said the case was overwhelming because of on-going complaints, and they were going to close the file because it wasn't major. The witness also saw the tenant give a report to the landlord's agents about one tenant attacking the tenant, and the witness saw scratches on the tenant's finger and neck or chin.

Analysis

Where a tenant disputes a notice to end 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. In this case, I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. With respect to the reasons for issuing it, I have reviewed the evidentiary material provided by the parties, and I cannot find that providing post-dated cheques every 4 months to the landlord is a material term of the tenancy, considering the undisputed testimony that it hadn't been an issue for 4 years prior to the notice being issued, and the testimony of the tenant that other tenants don't necessarily pay that way either. A material term is a term that is so important to one party that if the other party didn't agree, the contract would not have been entered into. The tenant testified that the tenancy agreement states that a tenant is required to give the landlord 4 post-dated cheques, but does not specify every 4 months thereafter, and I agree. Therefore, if the term is not clear, it cannot be considered a material term of the tenancy agreement.

Further, I am not satisfied that the landlord has established that the tenant has put the landlord's property at significant risk. The tenant and the tenant's witness deny those allegations, and where it boils down to one person's word over the other, I am not satisfied that the allegation has been proven.

With respect to the remaining reasons listed in the notice, I am satisfied that the landlord moved 3 other tenants across the street at the landlord's expense to try to keep

peace in the complex among tenants. The question before me is whether other tenants have caused the disturbances due to rumours they've heard about the tenant, or if the tenant has caused the disturbances. I have reviewed the material, and consider the undisputed testimony that the tenant sprayed a substance in another tenant's face, a substance believed to be hairspray, as well as other accusations. I find that the landlord has established that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and I find that the landlord had cause to issue the notice.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

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: December 12, 2014

Residential Tenancy Branch

