



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Realty Executives Vantage
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 tenants 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.

An agent for the landlord company and both tenants attended the hearing and each gave affirmed testimony. The tenants also called 2 witnesses who gave affirmed testimony. The parties also provided evidentiary material to the Residential Tenancy Branch and to each other prior to the commencement of the hearing, and were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided. The tenants provided evidentiary material that was not provided within the time provided in the Residential Tenancy Branch Rules of Procedure, however the landlord's agent did not oppose consideration of that evidence. All evidence and testimony of the parties and the witnesses has been reviewed and is considered in this Decision.

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 given in accordance with the *Residential Tenancy Act*, and specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began in January, 2005 and the tenants still reside in the rental unit. Rent in the amount of \$900.00 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 tenants in the amount of \$362.50 which is still held in trust by the landlords and no pet damage deposit was collected. A copy of the tenancy agreement has been provided. The rental unit is one of 4 units within a rental complex.

The landlord's agent further testified that 2 of the other tenants within the complex have continually complained about the behaviour of one of tenants and they have threatened to move out as a result. One has agreed to stay if the landlord follows through with evicting the tenants and another tenant has already moved out. The landlord's agent referred to a 2-page undated letter from a person who confirms that and sets out some complaints. The landlord's agent testified that in some instances police were called and the second time was due to an assault, which resulted in no charges. The landlord's agent referred to a 6-page letter signed by 2 people and dated September 15, 2014 describing the altercation and other complaints. The tenants have been resident for a number of years, but the bullying has gotten to the point that the landlord does not want to deal with it anymore. A lot of the confrontations deal with parking, and tenants get territorial, however parking is on a city street, open to everyone on a first-come, first-served basis, and the landlord's agent keeps hearing that other tenants are being bullied by the tenant. The back yard is not fenced and everyone tries to stay in their own area, but the tenant interferes with their private space and others have taken offence.

The landlord's agent further testified that the same tenant has gone into other rental units without knocking and the other tenants feel they have to lock their doors. A number of letters from tenants have also been provided. Also, the landlord's agent was told by a contractor working in another vacant unit that the tenant walked in without invitation.

The landlord issued a 1 Month Notice to End Tenancy by sending it registered mail to the tenants on October 22, 2014. The landlord's agent orally provided the tracking number of the registered mail assigned by Canada Post. A copy of the notice has been provided and it is dated October 22, 2014 and contains an expected date of vacancy of November 30, 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;

- Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord's also testified that a 1 Month Notice to End Tenancy for Cause was issued previously to the tenants, but was rescinded by the landlord because the landlord could not deal with it at that time. The landlord's agent orally requests an Order of Possession, and testified that the tenant paid rent for the month of December, 2014, for which the landlord issued a receipt showing that the money was being received for use and occupancy only, and did not serve to reinstate the tenancy.

The first tenant testified that the allegations are not truthful, however words have been exchanged. The tenant also denies ever entering other rental units, but did speak with the contractor. The contractor was working on a bathroom and the tenant asked to see the job and the contractor agreed. The tenant saw the work and left within about 2 minutes. He also denies being intoxicated during any altercations.

The second tenant testified that the letters in the landlord's evidence package came as a complete shock, and the tenant had no idea of any complaints other than a letter a number of years ago about garbage. She testified that one of the letters is dated in September, and all of the other letters are dated October 21 and 22, 2014, but don't show dates of the alleged incidents, but the letters come on the heels of the landlord rescinding the first notice given by the landlord on October 8, 2014. The tenant had a conversation with the property manager who was employed there at the time who told the tenant that it was issued for over-parking and then brought up the tenant's husband's drinking. Two of the letters are from people, who were drinking buddies of the tenant's husband until that notice was issued in September, 2014. The tenant asked the property manager why the tenant wasn't informed about the complaints but the property manager didn't respond. From that point on, her husband has not had a drink outside at all to ensure that isn't an issue.

The tenant also defends one of the complaint letters about her husband yelling at a small child, and testified that the child was chasing a cat toward a vehicle that the tenant's husband had on jacks and the child was unattended. She also testified that there is no substance to a complaint that the tenant blocked a vehicle in; there was space and the tenant unloaded her car and moved it about 10 minutes later.

The tenant also testified that her husband would never go into another person's house without knocking, not even a house belonging to a sibling.

The tenant also testified that on September 9, 2014 folks were driving a truck across the lawn at night moving a mattress and the tenant's husband went out asking what they were doing. Another person thought they were going to drive through her window. On another occasion a barbeque was melting the siding of the building and the tenant knocked on their door to tell them, and one of them started yelling and screaming. The tenant put up her hands and left and testified that there was no intent to cause trouble. The same letter in the landlord's evidence package states that on October 20, 2014 the tenants attacked the writer about a puppy. All the tenant did was say that the dog should be on a leash; there was no attack.

The tenant now keeps a list of what the tenants do and what's happening in the yard.

The tenants seek an order cancelling the notice.

The tenants' first witness testified that on October 25 and 26, 2014 the tenants were both out of town. The witness had just gone to bed and her husband retrieved her due to screaming by another tenant who was directing the anger toward the foster child of the tenants. The witness told the foster child to ignore it, and the witness put in a complaint with the landlord.

The witness further testified that she has never known the tenant to barge into her home and even when told to walk in, he still knocks. He is not an aggressive drunk, quite the opposite and the tenant has never expressed anger or behaviour while drinking that would be upsetting. The witness has never had an issue with the tenants and there have never been any disturbances, and after they received the first notice to end the tenancy, they have been hermits.

The witness stated that she watches the tenants' home when they are away and confirms that the tenants were away on June 27 to July 1, 2014; as well as for a time in August; October 25 and 26 and in September.

The witness also testified that she let the tenant use her driveway and a car was on jacks when a cat from another unit went under the vehicle and an unattended child tried to crawl under the vehicle to get the cat. The tenant stopped her and the witness told the child to go home. The witness resides in the duplex next to the home of the tenants.

The tenants' second witness testified that he has lived in the complex next door to the rental property for over 20 years and there haven't always been parking issues. It's common courtesy to not park where others normally do, but he does not believe that the problems have been caused by the tenants, nor is he aware of any harassment by the tenants about it to other occupants.

The witness further testified that he has seen the tenant while drinking and stated that he's talkative while under the influence but not aggressive, and described the tenant as being a very happy person, not a concern and not vulgar or loud.

The witness was present when the police were called on May 2, 2014. The witness does not know what initiated the incident but a red jeep was parked close to the tenant's vehicle and it was obviously done on purpose, or staged because there was enough room to avoid that, and the person who owned the jeep was taking photographs as if to show that the tenant had blocked her in, but didn't. The witness saw the jeep park there. The witness has also seen other tenants park half on each parking space which seems to instigate problems.

Analysis

Where a tenant disputes a notice to end tenancy, 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 that it is in the correct form and contains information required by the *Act*. With respect to the reasons for issuing it, firstly, I do not accept that the landlord has established that the tenants have engaged in any illegal activity.

I have also reviewed the letters provided in the landlord's evidence package, and I am not convinced that the incidents are entirely the fault of the tenants. The allegations are disputed by the tenants and where it simply boils down to one person's word over another, the allegation is more difficult to prove. The landlord's agent testified that there is no log of events kept by the landlord and the tenant testified that she had no idea of any of the complaints.

Where a landlord finds that a tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; or has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, the landlord ought to put the complaint in writing to put the tenant on notice that such specific behaviour is contrary to the *Act* and the tenancy agreement. Failure to do so and failure to keep any logs or records with respect to complaints when they are made but alleged later is not evidence that the landlord has justified ending the tenancy.

The notice to end tenancy is hereby cancelled and the tenancy continues.

I hereby order the tenants to reduce rent for a future month by \$50.00 as recovery of the filing fee.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated October 22, 2014 is hereby cancelled and the tenancy continues.

I hereby order the tenants to reduce rent for a future month by \$50.00 as recovery of the filing 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: December 12, 2014

Residential Tenancy Branch

