



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLLIERS INTERNATIONAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, MNSD, ERP, RP, LRE, LAT, AS, RR

Introduction

As set out in the Interim Decision dated January 5, 2015, the tenant applies to cancel a one month Notice to End Tenancy for cause dated November 26, 2014. The remainder of the claims listed in her application were dismissed with leave to re-apply.

The Notice in question alleges 1) that the tenant or a person permitted on the property by her has “significantly interfered with or unreasonably disturbed another occupant or the landlord” and 2) that the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Proof of either of those grounds justifies the eviction of a tenant under s. 47 of the *Residential Tenancy Act* (the “Act”).

In support of the Notice the landlord (which is the misnamed corporate respondent, not the respondent Mr. D. McG.) has filed a variety of materials in support of the Notice. At hearing the landlord verbally particularized the grounds for the Notice as:

- 1) The tenant has significantly interfered with or unreasonably disturbed at least three other tenants,
- 2) The tenant wrongfully pulled the fire alarm in the building twice,
- 3) The tenant wrongfully called the police,
- 4) The tenant wrongfully reported bedbugs and then refused a professional inspection of her suite, and
- 5) The tenant was given warning letters on to harass other tenants but has continued to do so.

Issue(s) to be Decided

Does the relevant evidence presented at hearing demonstrate on a balance of probabilities that either of the grounds in the Notice have been established?

Background and Evidence

The rental unit is a one bedroom apartment. The tenancy started in May or June 1, 2014 though the tenant had resided in another apartment in the building since April 2013.

The rent is \$650.00 per month. The landlord holds a security deposit and a pet damage deposit. The parties disagree about how much has been paid.

Ms. C.T. for the landlord testifies that the tenant is “constantly” calling the police and the fire department. She says the tenant called in two false alarms to the fire department in June and July 2014. The tenant has been told to stop. She says the Fire Marshall threatened to levy a fine if it occurred again.

Regarding the police, it appears the tenant had an encounter with another tenant last summer at a location away from the apartment building and Ms. C.T. advised the other tenant to call the police.

Ms. C.T. says that the tenant reported bedbugs in her suite. The tenant postponed a professional inspection and then, once an inspection was done, no bugs were found. After that, someone posted handwritten notices in the building warning about bedbugs. Ms. C.T. thinks it was the applicant tenant. She says she recognizes the tenant’s handwriting. The notices caused concern among other tenants.

Ms. C.T. testifies that she has received many verbal complaints about the tenant. She says the tenant was approaching other tenants in the lobby about the bedbugs and has turned prospective tenants away.

In regard to the alleged breach of a material term of the tenancy, Ms. C.T. points to a clause in the tenancy agreement requiring the tenant not disturb, harass or annoy another occupant or the landlord or a neighbour. By letter dated November 6, 2013, the tenant was given written warning that she had been verbally harassing the building staff. The letter was noted as “First Warning” and that should the landlord receive another complaint the tenancy would be terminated.

By letter dated July 4, 2014 the tenant was given a "Second Warning" concerning harassment. In that letter the landlord alleged the tenant had sent the landlord emails regarding the operation of the building and the activity of other tenants. The tenant was informed she should not be "patrolling the building or taking note of other tenants' activities unless they directly affect you." The landlord's letter states this to be a "serious breach" of the tenancy agreement.

She says that a tenant has just moved out because of the applicant tenant. It is not clear whether that was before or after the Notice was given.

Ms. C.T. adduced three handwritten, unsigned, anonymous notes from three tenants in support of the landlord's claim that the tenant has been unreasonably disturbing or significantly interfering with other occupants.

Ms. C. S. for the landlord testified that the tenant frequently emails the landlord's office and that some are "abusive" though none were specifically referred to by her. She alleged the tenant accused a landlord's representative of poisoning her cat though she is uncertain about how that accusation came to her attention.

Mr. G.V. the building manager testified saying that the tenant wouldn't let him into her suite to accompany the pest control man. He attended when the tenant pulled a fire alarm in a hallway in the building. He says it was a false alarm and that the firemen were not very happy about it. He says that a few weeks later the alarm was pulled again; another false alarm. He is not sure who pulled the alarm but strongly suspects the tenant.

Mr. G.V. says he is the subject of verbal abuse from the tenant. She swears at him and at the landlord and calls him names. No particular incidents were referred to.

In response, the tenant says she had seen smoke in the hallway of the building and called 911. She says the 911 operation insisted that she pull the alarm and leave the building so she did. She denies ever pulling it again.

The tenant says the police call was in response to a threatening note another tenant left on her door.

She says that she did see a bed bug in her suite and that's why she reported it.

Analysis

The ending of a tenancy is a very serious matter. The burden of proof is on a landlord to establish cause. While the test is on a balance of probabilities, clear cogent evidence will be required to establish it.

An adjudicator will be justified in scrutinizing evidence with greater care and consider the cogency of it if serious allegations are to be proved by it. This is not a departure from the “balance of probabilities” standard (*Continental Insurance Co. v. Dalton Cartage Co.*, [1982] 1 SCR 164).

The evidence does not establish that the tenant has been significantly interfering with or unreasonably disturbing other occupants.

The anonymous notes from other tenants are of little, if any, evidentiary value. Freedom of Information and Protection of Privacy (FIPPA) Adjudicator Austin-Olson in *City of Chilliwack*, Decision F07-01 (January 29, 2007) outlined the principle in regard to local government bylaw enforcement proceedings. It is the same principle applied here

The explicit assurance of confidentiality is qualified because there is a duty to disclose to an accused all information relevant to the proceedings.

A landlord is entitled to keep the name of any complainant confidential, but when it comes to an adjudicative proceeding and where the evidence of the complainant (not merely the fact of a complaint) is germane and offered as evidence, the identity must be disclosed.

The landlord’s evidence of other tenants vacating because of this tenant’s conduct is also of little value. In order to establish such a claim it would be vital to have evidence from such former tenants, stating their true reason(s) for leaving and thus affording the applicant tenant an opportunity to qualify or rebut that evidence.

I find that the landlord has not presented evidence sufficient to establish that other occupants in the building have been significantly interfered with or unreasonably disturbed.

In regard to the fire alarm, the tenant denies causing a false alarm and offers what appears to be a reasonable explanation for admittedly pulling it once. The evidence about what actually happened is far from ascertainable on the competing evidence.

The landlord has not satisfied the burden of proof about this allegation and I dismiss this item as a ground for eviction.

As with the fire alarm allegation, the evidence presented by the landlord regarding the calling of the police is far from establishing that the tenant's conduct was somehow wrong or justified. It does not lead to the reasonable conclusion that the tenant was interfering with or disturbing other occupants. It may be it was the tenant who was wrongly disturbed or interfered with.

I accept the landlord's interpretation of the pest control company letter that there was no sign of bedbugs or any other pest in the tenant's apartment. The tenant gave sworn evidence that she saw a bedbug. On this evidence I am not persuaded that the tenant somehow maliciously made a false complaint and thus, arguably "significantly interfered with or unreasonably disturbed" the landlord. It may be that she did act maliciously or it may be that she was acting sincerely. The evidence presented does not prove the former on balance of probabilities.

As well, it may be that the tenant delayed the ordinary course of the pest control company's inspection. Leaving aside the question of whether or not the delay was justified or reasonable in the circumstances, the evidence does not show that as a result there was some significant interference or unreasonable disturbance to another occupant or the landlord as alleged in the Notice.

The allegation of the tenant breaching a material term of a tenancy agreement and not remedying the breach within a reasonable time after being given written notice to do so must also fail.

Regarding the first warning letter, the letter of November 6, 2013, there is no particular evidence about the tenant harassing the building staff prior to that date. Who was harassed, when and how would be the evidence required to establish a breach of the term in the tenancy agreement. The letter making the allegation is not proof of the allegation itself.

Similarly, the second warning letter notes that the tenant is involving herself in the affairs of the building and other tenants. No particular tenant or landlord employee was identified in the letter or at this hearing as having been disturbed, harassed or annoyed, or how or when.

The landlord's claim that the tenant has failed to remedy a material breach after being given written notice to do so must fail. I make no finding about whether the conduct

alleged, had it been proved, would amount to a material breach of section 17 of the tenancy agreement.

The tenant's application to cancel the Notice is allowed. The Notice is hereby cancelled.

I wish to point out that this decision is not a finding that the tenant has not been disturbing or interfering with other occupants or the landlord. It is a finding that the landlord has not proved the particular grounds with the evidence presented at this hearing. If the alleged conduct is indeed occurring and if it continues, the landlord may issue another eviction Notice and may present convincing evidence at the next hearing.

The tenant has filed as her evidence a volume of almost 100 pages of lengthy emails she has sent to the landlord over the past sixteen months. If this tenancy is to continue I suggest the tenant quit or significantly reduce her email activity with the landlord.

As well, it is apparent there is a great deal of friction between the tenant and the building manager Mr. G.V. Whatever opinion each might have formed about the other, I recommend that they conduct themselves civilly, in a business-like manner.

Conclusion

The Notice to End Tenancy dated November 26, 2014 is cancelled.

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: January 16, 2015

Residential Tenancy Branch

