



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, O

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and for "other".

The Tenant stated that on December 10, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Respondent with the initials "D.T.", via registered mail and that on December 10, 2014 he personally served those documents to the Respondent with the initials "L.S.". The Agent for the Landlord acknowledged receiving these documents on, or about, December 10, 2014 and they were accepted as evidence for these proceedings.

On December 29, 2014 the Tenant submitted additional documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were sent to the Landlord by registered mail on December 29, 2014 and that they were personally served to the Agent for the Landlord on December 29, 2014. The Agent for the Landlord stated that he received these documents from another occupant of the residential complex on January 11, 2015. The Agent for the Landlord declined the opportunity for an adjournment for the purposes of considering these documents, as he does not need additional time to consider them. These documents were therefore accepted as evidence for these proceedings.

On January 06, 2015 the Landlord submitted documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that these documents were served to the Tenant by a third party on December 25, 2014. The Tenant acknowledged receiving these documents on, or about, December 25, 2014 and they were accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that a One Month Notice to End Tenancy for Cause was personally served to the Tenant indicating on November 30, 2014, which declared that the Tenant must vacate the rental unit by December 30, 2014. The reasons stated for the Notice to End Tenancy were that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the Tenant has engaged in illegal activity that has, or is likely to, damage the Landlord's property; and that the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant.

The Agent for the Landlord stated that approximately 8 months ago the Tenant was playing his music loudly with his front door open, so he asked him to reduce the volume, as it was after 11 p.m. The Tenant turned the music up and uttered a profanity that typically infers non-compliance.

The Tenant stated that he did utter a profanity when the Agent for the Landlord asked him to reduce the volume of his music on this particular occasion and that he increased the volume for approximately ten minutes, after which he turned it down.

The Agent for the Landlord stated that on, or about, October 02, 2014 he observed the Tenant throwing a knife at a target which the Tenant had set up on a chair in front of the entrance to the laundry facilities of the residential complex. The Landlord and the Tenant agree that the Agent for the Landlord asked the Tenant to stop throwing the knife and that the Tenant continued throwing the knife for approximately ten minutes after he was asked to stop. The parties agree that the door to the laundry room was damaged when it was struck on several occasions by a knife that missed the target.

The Agent for the Landlord stated that in the summer of 2014 he knocked on the Tenant's door at 8:30 p.m. to provide him with a new light. He stated that the Tenant was extremely angry because the Tenant had been wakened and that the next day the Tenant raised his fist and came very close to the Agent, at which time the Tenant told him that he wanted to punch the Agent but would not do so because he did not want to be charged.

The Landlord submitted a letter from an occupant of the residential complex with the initials "J.M.", in which the occupant stated that he overheard the Tenant screaming at the Agent for the Landlord and threatening to assault him if he ever wakens him again. He stated he observed the Tenant "waving a fist menacingly" in the Agent's face.

The Tenant stated that he was upset about being wakened when the light was delivered, but he denies threatening the Agent for the Landlord or acting aggressively towards him.

The Agent for the Landlord stated that approximately six months ago he removed the Tenant's laundry from a common washing machine and placed it on top of the dryer. He stated that when he told the Tenant the Tenant was upset and that later in the day the Tenant came to his door and threatened to harm him. He stated that the Tenant wanted him to exit his suite for the purposes of fighting but he refused to leave his suite.

The Tenant stated that he was "a little" angry about the laundry incident; that he did go the Agent for the Landlord' suite to discuss the incident; but that he never threatened to harm the Agent as a result of the incident and he did not attempt to fight as a result of the incident.

The Landlord submitted a document from an occupant of the residential complex, whom I will refer to as "P". In the document "P" declared that the Tenant as threatened him numerous times; that he has threatened him with a "shock stick"; that he has threatened him with a collapsible baton; that he has threatened to burn buildings on the residential property; that he has called "P" a "goof"; and that he has fired bb pellets at his rental unit. The Tenant denies all of these allegations, although he acknowledged that he has called "P" a "goof".

In the document "P" declared that he observed the Tenant pick up another occupant of the rental unit by his shirt. . The Tenant denies this allegation.

The Landlord submitted a document from an occupant of the residential complex, whom I will refer to as "J.M". In the document "J.M" declared that the Tenant on the evening of November 11, 2014/November 12, 2014 the Tenant banged loudly on his door and when he opened the door the Tenant hit him on his chest with his forearm, causing him to fall backward onto the bed. He declared the Tenant was screaming at him and threatening to punch his face. He declared the Tenant was carrying a black object which might have been pepper spray.

The Landlord submitted a document from a friend of "J.M.", whom I will refer to as "N.G". In the document "N.G." declared that he was visiting "J.M." on the evening of November 14, 2014when the Tenant knocked loudly on his door. He declared that the Tenant hit "J.M" on his chest with his forearm, causing him to fall backward onto the bed.

The Tenant stated that he did go to "J.M."s rental unit in November to complain about

noise and being bothered by car lights shining into his unit, but he stated that he did not touch or push "J.M." . He stated that "J.M." produced a baseball bat and threatened to kill him with it.

The Landlord and the Tenant agree that the police arrested "J.M." after the Tenant reported that "J.M." sprayed him with pepper spray. The Landlord stated that "J.M." told him he was defending himself after the Tenant struck him with an asp. The Tenant denies striking "J.M." and contends the attack was entirely unprovoked. The Tenant stated that this incident occurred days after he went to "J.M."s unit to complain about noise in November.

Analysis

On the basis of the undisputed evidence, I find that on November 30, 2014 the Tenant was served with a One Month Notice to End Tenancy which informed the Tenant that the Landlord wished to end the tenancy in accordance with section 47(1)(d)(i) of the *Act*.

Section 47(1)(d)(i) of the *Act* authorizes a landlord to end a tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

I find that the Tenant interfered with the Agent for the Landlord's attempts to protect the quiet enjoyment of other occupants of the residential complex approximately eight months ago when he did not immediately comply with the Agent's request to reduce the volume of his music. I find the Tenant's use of profanity during this interaction and his decision to actually increase the volume of music for approximately ten minutes to be confrontational and entirely inappropriate.

I find that the Tenant interfered with the Agent for the Landlord's attempts to protect the quiet enjoyment of other occupants of the residential complex and to protect the Landlord's property in October of 2014 when he did not immediately comply with the Agent's direction to stop throwing a knife. Given that the Tenant had placed his target in close proximity to the entry to the laundry facilities, I find that the Agent acted reasonably and responsibly when he asked the Tenant to cease and I find that the Tenant should have ceased immediately. In my view the Tenant's act of throwing a knife at the target presented a hazard to the Landlord's property, given that knives that missed the target were striking the building. More importantly, I find that the Tenant's actions had the potential to discourage other occupants from using the laundry facility, given the dangers of approaching someone who is throwing a knife.

I find that the Tenant significantly disturbed the Agent for the Landlord in the summer of 2014 when he acted aggressively towards him after the Agent has awakened him when he was delivering a light to the rental unit. I favour the Agent for the Landlord's testimony regarding this incident over the testimony provided by the Tenant, who claims he did not act aggressively, as the Agent for the Landlord's testimony was corroborated

by another occupant of the residential complex who observed the interaction.

I find that the Tenant significantly disturbed the Agent for the Landlord approximately six months ago when he acted aggressively towards him because the Agent had removed the Tenant's clothing from the washing machine.

I find that the Tenant significantly disturbed "P" at various times during this tenancy by threatening him with bodily harm.

Although I have no direct evidence from the occupant "P" observed being picked up by the shirt by the Tenant, I find it reasonable to conclude that this act disturbed this occupant.

I find that the Tenant significantly disturbed "J.M." when he went to his unit to complain about being disturbed by noise and car lights in November of 2014.

Although the Tenant denies many of the allegations made by the Agent for the Landlord, "P", "J.M.", and "N.G.", I find that the denials are self-serving and that they lack credibility, given that similar allegations have been made by four separate individuals.

I find that the evidence regarding the Tenant's aggressive behaviour that has been provided by the Agent for the Landlord, "P", "J.M.", and "N.G.", when considered collectively, corroborates the evidence provided by each witness and I favour their evidence over the testimony of the Tenant.

I find that the collective evidence demonstrates a pattern of aggressive and confrontational behaviour that supports the Landlord's attempts to end this tenancy pursuant to section 47(1)(d)(i) of the *Act*. I therefore dismiss the Tenant's application to set aside the One Month Notice to End Tenancy.

In reaching this conclusion I have placed no weight on the Tenant's testimony that he was assaulted by "J.M." days after he went to "J.M."s unit to complain about noise. As there is no direct evidence to show that the Tenant acted inappropriately on this occasion, I do not find it is relevant to my decision regarding this tenancy. While I accept that it demonstrates that "J.M." may be contributing to the conflict between him and the Tenant, I find that the Tenant is directly responsible for many of the disturbances that occurred prior to this alleged assault.

Conclusion

Although the Landlord did not know the correct term, I find that the Landlord effectively requested an Order of Possession at the hearing by clearly indicating he wanted the Tenant to vacate the rental unit by the end of the month. I therefore grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

I grant the Landlord an Order of Possession that will be effective two days after it is served upon the Tenant. The effective date of the Order of Possession reflects my serious concern that the violence at this residential complex may escalate once the Tenant realizes his tenancy is ending. The Landlord has the right to permit the Tenant to remain in the rental unit until the end of January but the effective date of the Order of Possession gives the Landlord the right to end the tenancy earlier if necessary.

The Landlord must refund rent payments made for January, on a per diem basis, if the Landlord elects to serve the Notice to End Tenancy prior to January 28, 2015.

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 13, 2015

Residential Tenancy Branch

