



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; the landlord and her witness.

During the hearing the landlord did not request an order of possession should the tenant be unsuccessful in his Application for Dispute Resolution.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on April 3, 2010 for a 1 year fixed term tenancy beginning on May 1, 2010 that converted to a month to month tenancy on May 1, 2011 for a monthly rent of \$1,200.00 due on the 1st of each month with a security deposit of \$600.00 paid. The parties acknowledge that the landlord is the tenant's sister-in-law. The landlord's witness is her adult son.

The landlord submits that she agreed to reduce rent to \$600.00 per month for the tenant to complete some work on the residential property. The tenant submits that not only has been doing work on the rental unit but he has also done extensive work to the landlord's residence.

The landlord submits that the tenant drinks a lot of alcohol and he gets abusive when he drinks. She states that he even came to pick her up at the ferry when he was drunk. She states that she should not have to put her life in danger because of his drinking and driving.

The tenant contends that it was the landlord who was acting irrationally when he picked her up at the ferry, including not responding to text messages to find her at the ferry terminal. He also states that she continued to yell and scream at him and call him names the whole trip home.

The landlord submits that the tenant and his daughter have been talking to mutual friends and telling them that the landlord is taking cocaine. The tenant submits that he and his daughter have never indicated that she is taking cocaine but rather that she is taking medication for mental health issues.

The landlord submits that the tenant then continues his abusive behaviour by entering her home and continuing to yell; scream and threaten her. The landlord's witness testified the landlord's version of events related to interactions with the tenant was correct.

The witness also states that 4 years ago the tenant tried to kill him by throwing a plate at him. The tenant disputed that he ever attempted to kill the landlord's witness. The landlord provided no testimony as to why she would not have tried to end the tenancy after such a major issue if the tenant had indeed attempted to kill her son. The landlord submits she now fears for her life as a result of the tenant's behaviour.

The landlord submits the tenant is causing damage to the rental unit and property. She states that the tenant has dug a trench around the rental unit; that he has four vehicles park on the property when he should only have one; and that he has created a large garbage pile in the back yard.

The tenant submits that as a result of water entering into the rental unit he advised the landlord he would need to install a perimeter drainage system around the rental unit. He states that he wanted the landlord to purchase supplies and to have her adult son come and help him complete the work.

He states that the landlord indicated she had no money to purchase supplies so he bought them himself and he was trying to arrange for the landlord's son to help. The tenant states he got started on the work but by the time he realized the landlord's son was not going to help it was too late in the season due to lower temperatures to complete the work. The work remains incomplete at the time of the hearing.

The tenant acknowledges have more vehicles than allowed in the tenancy agreement.

The tenant submits that the couch that is on the garbage pile was his. However, he states that he was moving it out of his unit and had planned to remove it from the property when the landlord said she want it. He said he put the couch down and said if she wanted it she could have it. He states it ended up on the pile. The tenant attributed other items on the garbage pile to be the landlords, including a desk that was thrown off the landlord's balcony by the landlord's son.

Both parties have submitted a substantial amount photographs; video and audio recordings and documentary submissions. The audio recordings are not clear as to how events began or who instigated the situations recorded.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) 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,
 - ii. Put the landlord's property at significant risk;
- b) The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property; or
- c) The tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time.

I find, based on the events the landlord testified extensively on that the “disturbances” the landlord alleges are related to the parties’ familial relationship rather than their landlord/tenant relationship. A tenant is not obligated, for example, to pick up their landlord from the ferry but this more likely a familial obligation.

I find it would be unreasonable to end a tenancy based on disagreements between family members that have nothing to do with the tenancy itself.

The landlord has submitted a version of events and the tenant has provided an equally plausible version of events. I find the audio recordings fail to provide any light on who is at fault for these interactions, as they only record events that are underway and contain nothing but both parties screaming at each other.

For these reasons, I find the landlord has failed to provide sufficient evidence that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

As to the issue of damage to the landlord's property; failing to make necessary repairs within a reasonable time and putting the landlord's property had significant risk, I find as follows:

- The issues identified by the landlord (ie. The trench around the rental unit) are a result of the verbal agreement the parties had that the tenant would complete work around the property;
- I find that this work is incomplete through no fault of the tenant but rather the inability of the landlord to provide the tenant with supplies and support in a timely

manner to complete the work before winter temperatures prevented the tenant from doing so;

- I find that both parties have contributed to the mess in the yard and as such the landlord cannot use this as a ground to end the tenancy; and
- In regard to the number of cars parked on the property I find the landlord has provided no evidence as to how this puts her property at significant risk.

In addition, even if the above issues were cause to end the tenancy, I find the landlord has not provided any written warnings to the tenant that these issues were of concern to her; that he should correct any behaviour; make any repairs at all; or give him a reasonable time to make those repairs after providing him with any written notices.

For these reasons, I find the landlord has failed to establish any cause to end the tenancy.

Conclusion

I order that the 1 Month Notice to End Tenancy for Cause issued by the landlord on November 23, 2014 to be cancelled and that the tenancy remain in full force and effect.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the tenant for this application.

I order the tenant may deduct this amount from a future rent payment, pursuant to Section 72(2)(a).

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 07, 2015

Residential Tenancy Branch

