



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This dealt with the tenant's application for an order setting aside a 1 Month Notice to End Tenancy for Cause. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

Does the landlord have cause, as set out in the *Residential Tenancy Act*, for ending this tenancy?

Background and Evidence

This month-to-month tenancy commenced June 1, 2013. The monthly rent of \$725.00 is due on the first day of the month. The tenant paid a security deposit of \$362.50.

The rental unit is a two bedroom apartment on the third floor of a frame construction building. This building is part of a larger complex and is often described by residents as the B building. There are ten rental units and a laundry room on each floor of this building. There is one elevator.

The tenant moved into this unit with her daughter J and her son. J had a baby and she and the baby moved into another unit in the same building in July 2014. The tenant's daughter A had stayed with her off and on but has been living at the rental unit since the middle of January 2014. A had a baby, born prematurely, on October 18.

The tenant's son has always lived in the rental unit with the tenant. He is eighteen years old and is described by the tenant as high functioning Autistic. The tenant described him as a fully developed eighteen-year-old man physically but with the mental capacity of a twelve to fourteen year old boy. He attends school every school day. He

has to be up by 6:30 am to catch the bus so is in bed by 11:00 pm. He is at school until 2:00 pm.

On November 30 the landlord issued and served a 1 Month Notice to End Tenancy for Cause. The reasons stated on the notice 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.
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord described a series of incidents that led to the notice being issued. The landlord also filed copies of signed letters of complaint, either from their staff or other occupants, in support of each allegation.

The first was a letter from the tenant directly below the rental unit dated August 8. The letter described how, about 2 ½ weeks previous, a male stood on the edge of the tenant's balcony and urinated, hitting the neighbour's balcony. The tenant's evidence was that her son was at camp from August 7 to August 18 so it could not have been her son. She did not offer any evidence about her son's whereabouts in July, when this incident would have occurred.

There was a letter dated August 20 from another tenant describing an incident where the tenant's son kicked the door of the second floor laundry room hard enough that it made her jump. She stated that she had seen the same young man "sneaking around" at all hours of the day and night and that it was "very strange".

The building manager testified that in October, when checking the contents of bags of garbage that had been left beside, rather than inside, the garbage bins, they found hospital labels with the tenant's granddaughter's name on it.

The tenant and her daughter testified that the background of the close-up photo of the hospital label appears identical to the daughter's bedspread. They accused the landlord of coming into the rental unit without proper notice or permission and taking the photograph in her bedroom. The landlord's witness testified that they did not go into the rental unit and the background of the photograph is actually black and white garbage bags. The other photographs do show black and white bags of garbage in the pile.

The tenant and her daughter testified that the type of garbage bags shown in the photographs are not the type of bags they use. In particular, they do not shop at the stores named on some of the bags.

On November 19 another tenant of the building was unloading groceries from her car. She could not carry everything at once so she left a box of groceries by the trunk of her motor vehicle. When she came out to pick up this last box two women were walking away with the box of groceries. She confronted the women and an argument ensued. The two women headed into the B building so she tried to follow them. That is when one of the women grabbed her hair.

In her email to the landlord dated November 22 the complainant described the two women as: "both Caucasian, one had a bright green hoodie and curly shoulder length hair. The other had a striped shirt and dark brown hair."

The building manager's statement says that he received a call from the complainant immediately after the incident. He went by the tenant's unit and observed through the window that the tenant's daughter was wearing a green hoodie.

The police attend. The police and the complainant looked at the Facebook pages for the tenant and her two daughters. The complainant identified the tenant but not the daughter.

The tenant testified that she was at Costco at the time of the incident and she showed the police officer a date stamped receipt to prove this. The police told her the complainant could not describe her assailant to the police. The tenant says she has tattoos on her neck, wrists, arms and legs; she has a nose ring and an eyebrow ring; and she was wearing black nail polish. She was wearing capris so the tattoos on her legs were visible. Her position is that with these and other identifying marks the complainant should have been able to describe her to the police.

Ultimately no charges were laid. The parties offered different explanations for this.

Finally, the landlord filed a letter from a person who cleans the common areas of the building. This letter describes how on November 20 the writer went to the third floor to start cleaning. She took her black jacket off and hung it on the door knob of the utility room. She saw the tenant's daughter J come out of the elevator and go to the tenant's unit. "I was on the landing in the middle stair well when I looked up to see tenant and daughter with stroller walk past to the elevator. I had a funny feeling so I went up the stairs to see if my jacket was still there. It was gone. I looked out the third story window

to see tenant waiting for her daughter. When daughter came into view she was fixing something under the stroller compartment. It was black. It was only five minutes from when I hung up my coat until they left. There was no one else on the floor.”

The tenant acknowledged that she was in the hallway when the cleaner was there but said there were two other residents of the building there as well. She testified that the dark item in the stroller was a diaper bag.

The landlord testified that they have received notices to end tenancy from other tenants because of the level of theft in the building.

The tenant argues that the complaints are a result of mistaken identity. She testified that just a few days previous music was blasting from the unit immediately below her but a neighbour down the hall complained to her about the noise.

Analysis

On an application such as this the landlord must prove its allegations on a balance of probabilities.

Some of the description of “strange” behaviour by the tenant’s son is probably attributable to his Autism.

I accept that a male did urinate from the tenant’s balcony in July – either the tenant’s son or a guest of the tenant or one of her children. However, the tenant below did not write a complaint until two or more weeks after the event and the landlord does not appear to have taken any follow-up action in response to the complaint.

I find that at least one bag of the garbage found stacked beside the garbage bins belonged to the tenant. I do not think the landlord broke into the tenant’s rental unit and placed a bag of garbage on the daughter’s bed in order to take a photograph. However, this single failure to follow correct procedure is not sufficient grounds for ending a tenancy.

I also accept the landlord’s evidence that reports of theft and missing items in the building are causing concerns among the other residents of the building and may result in the landlord losing tenants.

The two incidents in November are very serious and are grounds for ending a tenancy. The question is whether the landlord has been able to establish, on a balance of

probabilities, that it is the tenant and her children, who were involved in these two incidents.

I have thought about the evidence presented for a long period of time because there are weaknesses on both sides.

The tenant's defense is blanket denial, allegations that she is being unfairly targeted by the landlord and other residents, and accusations of wrong doing by the landlord. Although she said she had documentary evidence to support her statements she did not file it. None of this evidence was particularly compelling.

On the other hand there were weaknesses in the landlord's evidence. I was troubled by the fact that the resident who had the confrontation over her groceries could not provide a better description of her assailant. Even though it was dark when the incident occurred, one would have thought she would have mentioned tattoos and piercings, not just "dark brown hair". IF it was too dark to notice these distinguishing marks at the time of the incident, how was she able to subsequently identify the tenant from a photograph? Further, this identification process took place in the building manager's unit under his supervision. The complainant did not testify and her written statement does not include any description of how she subsequently identified the tenant.

The employee whose jacket was stolen attempted to give a complete statement and, I believe, attempted to be as truthful and accurate as possible. However, she did not testify and was not able to confirm that she had a view of the corridor the whole time and could therefore confirm that no one else was in the area, even very briefly.

After much consideration I have concluded that although the circumstances are suspicious, the landlord has not met its' onus of proof. The evidence presented was just not enough to tip the balance of probabilities in the landlord's favour. According, the tenant's application is granted. The 1 Month Notice to End Tenancy for Cause dated November 30, 2014 is set aside and is of no force or effect. The tenancy continues until ended in accordance with *Residential Tenancy Act*.

As the tenant did not pay a fee to file this application no further order is required.

Conclusion

The tenant's application is granted. The 1 Month Notice to End Tenancy for Cause dated November 30, 2014 is set aside and is of no force or effect. The tenancy continues until ended in accordance with *Residential Tenancy Act*.

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 19, 2015

Residential Tenancy Branch

