



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HARWOOD HOLDINGS CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a Notice to End Tenancy for cause.

The tenant and agents for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the landlord was permitted to provide a copy of the One Month Notice to End Tenancy during the hearing to determine that a valid and legal Notice had been served upon the tenant. While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

Issue(s) to be Decided

Is the tenant entitled to have the One Month Notice to End Tenancy for cause (the Notice) set aside?

Background and Evidence

The parties agreed that this month to month tenancy started on December 01, 2007. Rent for this unit is \$1,080.00 per month and is due on the 1st of each month.

JC testified that the tenant was served the Notice on January 20, 2015 to end the tenancy for cause by posting the Notice to the tenant's door. The Notice has an effective date of February 28, 2015 and provided the following the reasons to end the tenancy:

1) 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) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) Put the landlord's property at significant risk;

2) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has

(i) Damaged the landlords' property.

JC testified that there have been several incidents where the tenant has scratched cars belonging to two other tenants and the building manager EK's cars in the parking lot. This happened after the tenant had disagreements with other tenants or EK. On January 03, 2015 the third incident took place after the tenant scratched another tenant's car and the landlord called the police. The police file number is 157995. An Officer came and questioned the tenant about this damage. The Officer later informed EK that the tenant was aggressive and angry with the Officer and EK was advised to give the tenant a notice to end the tenancy. The Officer also viewed video footage of the

damage being done to the other tenant's car. JC testified that the tenant scratched EK's car after the tenant had an argument with EK.

BO testified that there was also a confrontation in August, 2014 between the landlord's painter and the tenant outside. BO testified that she separated the two men and spoke to them to calm things down. The tenant came to BO's office and asked why the painter was so upset. BO testified that she told the tenant that the painter thought the tenant would scratch his car like he did EK's car. The tenant told BO that that was different because EK deserved it. BO testified that they had not previously informed the tenant that they thought he had scratched EV's car.

EK testified that the tenant scratched another tenant's car after that other tenant would not give the tenant a job. At that time all three of the parties with scratched cars filed a police report. The other tenant did speak to this tenant about the damage but did not accuse him directly. EK testified that they fear these issue will repeat themselves as the tenant has an anger problem and may hurt another person or damage someone else's property. EK testified that staff who work in the building are in fear of the tenant.

The tenant testified that he has been a long term tenant in the building without complaints against him until recently. The tenant testified that this all started when the tenant attempted to help a neighbour whose smoke alarm had been going off for 45 minutes. The tenant could not fix the problem for his neighbour so went to get the building managers to look at the problem. As they all entered the neighbour's unit EK slammed the tenant in the chest and pushed the tenant out of his neighbour's unit. This was unfounded and strange behaviour for EK to exhibit. The tenant testified that EK has a difficult attitude towards tenants in the building and the tenant has spoken to JC about it.

The tenant testified that JC had called the tenant to ask the tenant if he had seen anyone around EK's car or any suspicious activity in the parking lot. The tenant disputed that he has caused any damage to anyone's cars in the parking lot and feels this is an attempt to evict the tenant as other tenants on the north side of the building are all being slowly evicted.

The tenant agreed that when the Officer came to speak to the tenant that the tenant was rightly upset with the allegations made against him. The tenant testified that there is no video evidence showing he has damaged any cars. The tenant testified that he did have an issue with the landlord's painter and spoke to him to ask him why he had left all his materials in the tenant's unit. The painter told the tenant that it was not his problem. The tenant testified that he has a good relationship with everyone in the building.

The tenant refers to the other tenant the landlord stated who had his car scratched. The tenant testified that this tenant sells cars in the parking lot and is a friend of the tenants. This other tenant told the tenant that EK had told him that the tenant had drawn a line around his car. That other tenant did not accuse the tenant of doing this damage as he thought it had been done by other tenants he had some issues with. The tenant disputes ever saying to BO that he had damaged EK's car or that she deserved it.

The tenant questioned JC and asked where the video evidence is of the tenant damaging cars. JC responded that the Officer took the video with him and said he would take it up with the tenants whose car were damaged to determine if there are any charges to be laid.

JC questioned the tenant and asked why the tenant got so angry with the Officer if the tenant had done nothing wrong. The tenant responded that it is normal to be upset

when he is being accused of anything but stated he was not aggressive or angry with the Officer just upset about the false allegations.

EK testified that regarding the incident in the tenant's neighbour's unit; EK did not push the tenant out of the door, the tenant was upset because EK managed to disconnect the fire alarm without cutting the wires that the tenant insisted must be cut. The tenant insisted that EK be fired. It was the next morning when EK saw the damage to her car and knew it must have been the tenant due to the previous day's incident.

EK testified that when the Officer was in the office with EK looking at the video, the tenant came to the office and was angry. The Officer took the tenant away and spoke to him in the parking lot. EK testified that she was afraid for her life. When the Officer came back he said he had defused the situation and that the tenant was angry and uncooperative and the Officer wondered why the tenant had not been evicted earlier.

The tenant disputed the claims made by EK. The tenant testified that when he came to knock on the office door. The Officer was sitting with EK. The tenant asked to speak to the Officer and he willingly accepted. They went into the parking lot and the tenant asked the Officer to show the tenant the damage to any cars. The tenant disputed that he was angry or that he was escorted out of the office.

JC acting on behalf of the landlord orally requested an Order of Possession for February 28, 2015.

The tenant seeks to have the Notice set aside and for the tenancy to continue.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The parties have provided little documentary evidence for this hearing and therefore my decision is based primarily on the testimony provided at the hearing.

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The landlord has claimed that the tenant has caused damage to three vehicles in the parking lot and that this was recorded on video. The tenant disputed that he had caused any damage to a vehicle in the parking lot. The landlord, having the burden of proof, has not provided corroborating evidence such as a copy of this video to determine who actually caused the damage to these vehicles. Assumption on the part of the building managers is insufficient evidence to show that the tenant is responsible for this damage.

Equally the building managers have testified that the tenant is angry and aggressive and this was also related to the building manager by the Officer in attendance at the building. The tenant has disputed this testimony. As the landlord has the burden of proof in this matter to show that the tenant has significantly disturbed another occupant or the landlord, then I must find that without further corroborating evidence each party's testimony is equally probable and therefore this matter is one person's word against that of the other and the burden of proof is not met.

Consequently, in the absence of any corroborating evidence to support the reasons given on the Notice, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated, January 16, 2015 is cancelled and the tenancy will continue.

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: February 17, 2015

Residential Tenancy Branch

