



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 479711 ALBERTA LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

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

The tenant and landlord's agents attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence; however, part of the tenant's and part of the landlord's documentary evidence was received late. Section 3.14 and 3.15 of the Rules of Procedure state that an applicant's evidence must be received not less than 14 days before a hearing and the respondent's evidence must be received not less than seven days before a hearing. As service of evidence by both parties does not comply with the Rules of Procedure I have not considered these sections of documentary evidence, as discussed with the parties at the hearing.

While I have turned my mind to all the admissible 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.

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Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy?
If not is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that this month to month tenancy started on September 01, 2013. Rent for this unit is \$625.00 a month due on the last day of each month in advance.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for cause (the Notice) in person on January 26, 2015. A copy of this Notice has been provided in evidence and shows that the Notice has an effective date of February 28, 2015. The Notice gave the following 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 has not done required repairs to the unit, site of property.*

The landlord testified that during the tenancy the tenant has disturbed other tenants and the landlord when on many occasions the tenant has engaged in disputes and arguments with other tenants and guests of the tenant. These disputes have spilled out into the parking lot which the landlord has personally witnessed. Up to January, 2015 these disputes occurred as often as two or three times a week. Since the tenant has been served the Notice there has been three incidents during the month of February, 2015.

The landlord testified that she has received many verbal complaints from other tenants including the tenant's neighbour who has a young child. This neighbour has complained of late night parties, people coming and going from the tenant's unit at all hours and noise. This neighbour has now also put these complaints in writing to the landlord. The landlord agreed that she has not served the tenant with a warning notice about noise complaints and has not tried to speak to the tenant as the tenant is claiming that the landlord is harassing her. Previously the tenant would come to the landlord's office to present her side of the story whenever there had been an altercation with other tenants. The landlord would then speak to the tenant about these issues.

The landlord testified that she also lives in the complex and when she has been on her back porch the landlord looks directly at the tenant's unit. When the tenant has come outside she has shouted across the parking lot at the landlord calling her a bitch.

The landlord testified that there was an incident in January, 2015 where the tenant's guest broke the tenant's front window. The tenant indicated to the landlord and the police, who were called by the tenant, that her guest was responsible for this damage. On January 16, 2015 the landlord served the tenant with a warning letter about the broken window and told the tenant that she must get the window repaired. To date the tenant has not made this repair. The landlord testified that this damage has potential put the landlord's property at significant risk. The tenant has put cushions in the broken window; however, the heating for this unit is included in the rent and these costs could be greater due to the broken window. The unit is also at risk from water damage if rain gets into the unit through the broken window.

The landlord testified that the tenant also caused a blockage in her toilet. The tenant did write to the landlord asking for the toilet to be repaired. It had already been unplugged once. The tenant then filed an application against the landlord for repairs and at that hearing in January, 2015 the arbitrator ordered the landlord to have a plumber repair the toilet and to have the toilet emptied of feces. The landlord complied with this order and had the toilet pumped out and a plumber removed the toilet and found a fork was

blocking the toilet. The landlord incurred costs to have the toilet emptied and repaired. The tenant's neglect in putting a fork in the toilet caused this damage.

The landlord orally requested that the Notice is upheld and seeks an Order of Possession for the rental unit.

The tenant disputed the landlord's claims. The tenant testified that she has lived alongside her neighbour for eight months and has never heard about a noise complaint from her neighbour. The landlord has never written to the tenant concerning noise complaints or disturbances. The tenant testified that she has an agreement with her neighbour that if the tenant's music is too loud for her neighbour to let her know and the tenant will turn it down. The tenant agreed that she has had a few disagreements with her neighbours.

The tenant testified that she had been in arguments with her guests but this normally takes place inside her own unit and is not violent in nature. The time the police were called was when her guest accidentally broke the tenant's window when he was trying to get her attention. The tenant agreed she received a letter from the landlord concerning the window but states the landlord gave the tenant less than a month to get the window repaired and the tenant has little available income to do this work. The tenant testified that she had another broken window when this landlord took over as manager. That was repaired by the landlord's husband after two months and was never an issue to the landlord at that time concerning a loss of heat or water damage. The tenant testified that she has covered the window with plastic and cushions to prevent heat loss or water damage.

The tenant testified that the landlord breached the *Act* when they did not repair the tenant's toilet for just less than two weeks. The landlord did do a quick repair but the tenant was forced to clean out her own feces from the toilet first. The landlord did not fix the problem so the tenant filed an application for a repair order. The landlord did then send a plumber out who found a fork in the toilet. The tenant testified that there is a

shelf above the toilet which has many items on it. The tenant could have unknowingly put a fork on that shelf which then later dropped into the toilet causing the blockage..

The tenant testified that her unit is 190 feet from the landlord's unit. The tenant cannot see that far and she would have to scream at the landlord to be heard across that distance if she was going to call the landlord names. The tenant testified that she has not done this and there would have been complaints from other tenants if the tenant was screaming across the parking lot at the landlord.

The tenant asked the landlord if there have been other complaints from her neighbour other than the one dated February, 2015. The landlord responded that there have been many verbal complaints but only one in writing. The tenant asked the landlord if the landlord left the tenant for two weeks without a toilet. The landlord responded that they tried on three occasions to get into the tenant's unit but as the tenant has a dog that bites, it took a week to get in the first time. RB thought he had fixed the problem but then the tenant filed an application and the landlord was ordered to get the plumber in. the toilet was fixed on January 22, 2015.

The tenant asked the landlord if the back window was already broken when the landlord took over as manager. The landlord responded that it was but it was boarded up and was not an issue with security, loss of heat or water damage. It was agreed that RB would fix that window and the tenant would pay the cost of \$60.00 back. The tenant has paid \$20.00 back so far for that repair. The tenant asked the landlord if there have been complaints about the tenant calling the landlord vulgar names or screaming at the landlord. The landlord responded that there was a letter from a tenant in unit 12. In that letter that tenant has documented that he has seen the tenant screaming at the landlord in her office and in the street. The landlord agreed that the letter is not dated. The tenant asked the landlord if the tenant who sent that letter was evicted by the landlord. The landlord responded that the tenant is confusing the author of the letter with another tenant by the same first name. The tenant asked the landlord if, at the previous hearing, was the landlord asked if there were any complaints about the tenant and did the

landlord say that to the best of her knowledge there were no complaints. The landlord responded that the Arbitrator at that hearing was referring to complaints about the toilet not the tenant's behaviour.

The landlord asked the tenant when the tenant plans to fix the window. The tenant responded that she will have to get an estimate as she was working on the same cost as when RB repaired the back window. If it costs a lot more it may take the tenant two to three months to pay for the repair. The landlord asked the tenant that even though the tenant says the landlord has not provided written notice to the tenant about complaints, was there an incident when the tenant invited a banned person onto the property. The tenant responded that this is not true he was not banned and was allowed to be there for three days and then he was gone. The landlord asked the tenant to recall that it was not that person the landlord is referring to but another friend of the tenants and there was an incident with a knife. The tenant responded that the tenant had written to the landlord and informed her that if there was any problems with that man the tenant would kick him out. When he was asked to leave he refused so the tenant called the police to remove him.

The tenant, in closing, testified that she has agreed to pay for the broken window and the only person's health and safety that has been affected was the tenants due to the landlord not repairing the toilet. The tenant testified that the landlord's witness statements are dubious and the tenant refers to letters from her six witnesses. The tenant testified that it is the landlord who calls the tenant nasty names not the other way around.

Analysis

The tenant presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

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.

With this in mind I am not satisfied that the landlord has sufficient corroborating evidence to show that the tenant has significantly interfered with or unreasonably disturbed the landlord or another tenant. There does appear to be some animosity between the parties and while I accept that the tenant has had episodes by her own admission of arguments, the tenant has stated that these have been contained to her own unit. If the landlord or other tenants had been so significantly disturbed by the tenant's behavior the landlord should have issued and served the tenant with a warning or breach letter concerning any incidents. This would then put the tenant on Notice that incidents were causing a disturbance to her neighbors or the landlord and would not be tolerated. The landlord at that time can also inform the tenant that her tenancy would be in jeopardy if any further incidents occurred.

I find the tenant must be held responsible for the repair to the toilet. If the fork fell from the shelf into the toilet this may not necessarily be construed as a negligent act by the tenant; however, in having a shelf full of items above a toilet, any reasonable person could assume that some foreign object may fall from this shelf into the toilet and could potentially block the toilet. However, as this repair has been ordered and carried out by the landlord I am not prepared to find that this has put the landlord's property at significant risk or that the repair has not been made by the tenant with regard to the reasons given on the Notice.

With regard to the issues concerning the broken window; a tenant is responsible for her own actions and the actions or neglect of her guests permitted on the property by the tenant. The tenant agreed that her guest did break the window and therefore it is the tenant's responsibility to ensure the window is repaired in a timely manner. The landlord did inform the tenant of this in writing and the tenant has had sufficient time to make these repairs but has failed to do so. The tenant argues that the landlord did not repair

the back window for two months when that was broken. That window did not create the same problems regarding security, or potential damage to the property. That window was boarded up and this would therefore prevent heat loss, provide security for the unit and prevent the elements causing further damage. Some plastic sheeting and cushions are not sufficient barriers and this leaves the broken window open to the elements, a loss of heat which is paid for by the landlord and the security of the unit. Consequently, I find this reason given on the Notice is valid and the tenant's application to cancel the Notice is dismissed.

I refer the parties to s. 55(1) of the *Residential Tenancy Act (Act)* which states:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlord has orally requested an Order of Possession. Having upheld the Notice to End Tenancy I will grant that Order. The effective date on the Notice is February 28, 2015. As that date falls tomorrow and the parties will not receive a copy of this decision prior to that date, I grant the landlord an Order of Possession effective two days after service on the tenant.

Conclusion

I HEREBY dismiss the tenants' application.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective two days after service on the tenant. This Order must be served on the tenant, if the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

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 27, 2015

Residential Tenancy Branch

