Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNC, MNDC, OLC, FF

Introduction
This hearing dealt with an application by the tenants for orders setting aside two 1 Month Notices to End Tenancy; setting aside a rent increase; compelling the landlord to comply with the Act, regulation or tenancy agreement; and awarding the tenants a monetary order. The hearing was scheduled for February 5, 2014. The parties were not able to complete their evidence in the time allocated for the hearing (90 minutes) and it was continued to February 16, 2015 at 1:00 pm, a date and time convenient to all the parties.

Both sides were able to present their evidence in full. Although I heard and recorded all they had to say only the evidence that is relevant to the decision is referenced in this decision.

Issue(s) to be Decided

- Does the landlord have grounds to end this tenancy?
- If not, is the rent increase valid and should any other order be made against the landlord?
- Are the tenants entitled to a monetary order and, if so, in what amount?

Background and Evidence
This tenancy commenced April 1, 2010 as a one year fixed term tenancy and has continued thereafter as a month-to-month tenancy. The tenants paid a security deposit of $600.00.

The rental unit is a one bedroom apartment in a converted heritage home. There are eight other units in the building. The tenants have done a great deal of work to the unit, which the landlord acknowledged to be well done. The tenants expressed their love of this particular unit and their desire to stay in it.

The rental unit is accessed directly from the parking lot, up a half flight of stairs. There is a balcony on the front of this unit, overlooking the parking lot. There is a six foot high space under the balcony.

Unit 6 is directly below the tenants' unit. It is also accessed from the same parking lot. From the parking lot is a gate which leads into a patio area and the entrance. Two of this unit's windows are below the balcony.

On January 15, 2015 the landlord issued and served a 1 Month Notice to End Tenancy for Cause on the grounds that the tenants were repeatedly late paying rent. On January 19, 2015, the landlord issued and served a second 1 Month Notice to End Tenancy for Cause on the grounds that 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.
- Engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The tenant has two work trucks, a van, a car, a motorcycle, and one parking spot included in the rent. Parking, cleaning and maintenance of these vehicles are a continual source of friction. The tenant's testimony emphasized the care and pride he took in the maintenance of his home and his vehicles. For example, he consistently described his motorcycle as pristine.

For many years the landlord and the tenant had an arrangement that allowed the tenant to park his motorcycle under his balcony, in front of unit 6. The resident of unit 6 lived there for many years and never objected to the presence of the motorcycle.

However, she moved out in mid-April of 2014. The landlord renovated the unit and new tenants moved in mid-June. These tenants had their own belongings that they wished to put in the space in front of their unit. Further they did not want the tenants working, running or parking his motorcycle or any other of his vehicles in front of the windows of their suite. The tenant's response in the hearing was that if they did not like to look at motor vehicles they should not rent an apartment that looks out on asphalt.

From mid-June to mid-August the landlord served the tenant with four letters/warning notices telling him to move his motorcycle, planters and any other belongings from the area in front of unit 6.

The tenant's position was that they had an arrangement and he was entitled to this space. He relied upon a letter from the landlord dated July 4, 2012. This letter said in part:

> "This notice is tot address your use of common space and parking lot . . and clarify the use of these areas.
>
> - Parking – You may only park one vehicle in the premises. The parking space #5 is allocated to you and is your only space. Parking in other spaces, driveways, and designated "No Parking" areas is prohibited. You may park your motorcycle under your deck for the summer but must remove it by September 30th. It cannot be stored in the laundry room."

In essence, the tenant's argument was that this letter gave him permission to park his motorcycle under his deck every summer, not just the summer of 2012.

The landlord made a space at the back of the property available to the tenant as a place for him to store his things. When the tenant did not move the disputed items, the landlord did so when the tenant was away. He did this on October 1, 2014. He described the tenant as being very upset with him.

The landlord testified that the tenant's pattern of behaviour with new tenants who do not have a motor vehicle, and therefore have an unused parking spot, is to provide them with favours, such as free access to his wireless Internet, in return for use of their parking spot. The landlord wanted this behaviour to stop so he put a clause in Unit 9's tenancy agreement that "parking spot #9 only for car in name of tenants".

The tenant did provide the tenants of unit 9 with Internet access and they agreed he could use their parking spot. The landlord became very upset when he saw one of the tenant's motor vehicles in this parking spot. He very angrily confronted the tenant and the residents of unit 9.

The tenant filed a letter from the tenant of unit 9 to him dated January 19, 2015, that stated:

> "Unfortunately, it is in our lease that we signed, we aren't allowed to give out that space and it's for our use only. I'm sorry for not knowing this information and I really appreciate your help. Obviously we won't use your WiFi code."

The tenant also filed a note from the same tenant dated January 20th:

> "I told Brian that he could use our parking spot (#9) and that on my lease it did not stipulate that I could not let my company/neighbour use that spot."

The tenant asserted that this clause was not in the tenancy agreement when the argument occurred and that the landlord subsequently forced the tenants in unit 9 to sign a new tenancy agreement that contained that prohibition. In his rebuttal evidence the landlord said the particular clause was always in the tenancy agreement but it had not been initialled so he went back to the tenants to have them initial the clause.

SL testified on behalf of the landlord. He lived in this building from 2008 to 2012. When the landlord went away for a year, from August 2012 to August 2013, he managed the building on behalf of the landlord. He said the tenant was a challenge to him during this time. He described one incident where the tenant's work truck broke down. Instead of having the truck towed to a shop the tenant had a mobile mechanic come to the complex. The mechanic worked for two days replacing the engine. SL said the parking lot was blocked and the other residents were subject to the noise and disturbance for two days.

The tenant testified that he was going through hard time when his truck broke down and he could not afford the cost of towing. This was the best he could do in the situation. He stated that when the work was completed he cleaned the pavement "flawlessly".

The landlord served the tenant with a warning notice on December 31, 2014 for washing his car in sub zero temperatures and leaving a large icy area, which was very dangerous for other tenants. The tenant said that he salted the area very carefully after he washed the vehicle. The landlord's statement was that they had to salt the area.

SL testified that he looked after the building for the landlord for a month in the summer of 2014. One of his major tasks was to rent out a vacant unit. A lady was very interested in the unit. He arranged to meet her so she could submit an application. Before their meeting she ran into the tenant and asked him about the building. He told her that the previous tenant had paid $300.00 a month to heat the suite in the winter and that she had moved because of the costs of heating. SL testified that he made inquiries at B C Hydro and was told that the average cost the previous year had been $70.00 per month. He gave this information to the prospective tenant but she decided to rent elsewhere.

When the landlord returned he told him about this incident. The landlord was very upset and confronted the tenant.

After the confrontation the tenant left a voice message for the witness that was so disturbing to him that he saved it and transcribed it. The message ends:

> "What. . . What. . .Maaan . . .What evil people you are. Get ready . . .Get ready. Let the games begin while I unleash the dogs from hell now . . .Hahahaha. On the Internet. All over this city. You can't touch and hurt me. You broken the law. . . "

The tenant acknowledged that the transcript was accurate. He said that it was in response to the attacks made upon him by the landlord including accusations of adultery by him with another tenant and the landlord's sexual harassment of his wife. (The allegations of adultery related to a tenant who moved out of the building in April.)

The tenant of unit 3 submitted a letter in which she describes an incident that occurred on September 24, 2013, when the tenant came to her door to complain about noise. In her letter she says the noise was the result of her seven-year-old son doing some karate moves. She says she apologized but the tenant was not satisfied and continued to use very threatening body language and tone of voice for about ten minutes. She was badly shaken by the encounter. The tenant says the noise was the result of objectionable activities, not a child's sports, and was an ongoing and serious problem which the landlord ignored.

Both residents of unit 6 submitted letters and the female tenant testified at the hearing. She described the tenant as "a bully" and "quite scary". On one occasion when she asked the tenant not to wash/work on his motorcycle right outside their bedroom window he became verbally aggressive with her and told her "everyone here is going to lose except me".

The tenant filed an affidavit in which he accused the landlord of many things including exhibiting racist attitudes; being dishonest to potential tenants in a particularly egregious manner; causing a former tenant to end up in a mental health facility; and sexually harassing his wife. This statement also alleged that when a female neighbour's electricity was shut off and he ran an extension cord to her unit to help her out the landlord accused him of receiving sexual favours from the neighbour in return for his help – an allegation he found very insulting.

As part of the evidence filed in this hearing the tenant included a form letter alleging misconduct by the landlord in a previous commercial leasing arrangement and which included statements such as the landlord's wife "doesn't ever let him eat red meat because he becomes dangerous" and "I have talked to three previous business partners

of [landlord] and they all say he should never have been allowed to immigrate to Canada but because he had the money behind him he bought his way in".

Among other places he delivered a copy of this letter to his neighbours in unit 6 with a hand written note that said: "When I'm finished with [landlord] I'll be charging you with defamation and slander of character."

He also filed an affidavit from the tenant who had her electricity cut off in which this tenant alleges that the landlord harassed her and her fifteen-year-old daughter and entered their rental unit without permission.

The landlord denied the veracity of all of the tenant's allegations.

The tenant was determined that the landlord's wife should be informed of his allegations, particularly his allegations of sexual impropriety on the part of the landlord. He sent the documents to the landlord's wife by registered mail with instructions that Canada Post was only to accept her signature but she refused to sign the confirmation of receipt. He went to the landlord's home but she refused to answer the door. The landlord said his wife is afraid of the tenant. So the tenant went to the neighbour's and asked them where the landlord's wife worked. They refused to tell him. The tenant found out by other means where she worked and went to her workplace. The workplace has a security desk and the landlord's wife refused to see the tenant. The next day the landlord's wife received a notification from her workplace that a very personal fax had been sent to the office fax machine; a machine that is open to everyone in her office. This fax was 13 pages and was sent on February 11, after this hearing had started.

The tenant acknowledged all of the above. He expressed the view that is was his moral responsibility to get this information to the landlord's wife. Part of his justification was that she is half owner of the property so she needs to know what's going on. The landlord read a statement from his wife into the record in which she states that she felt harassed and threatened by the tenant's invasion of her personal space.

The landlord said the tenant has used threatening language to him in the recent past including the statement "Are you aware of what I am capable of?" The landlord said he is not afraid of the tenant.

The tenant said the landlord frequently used foul and abusive language to him and was often very angry in their confrontation.

Analysis

Section 47(1)(d) allows 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.

This is the test to be applied.

Whether or not a landlord or a tenant has engaged in unpleasant, immoral or illegal behaviour in a setting unrelated to the rental unit, either in the past or currently, is irrelevant to the consideration of whether the landlord has grounds to end a tenancy.

The tenant's manner of expressing herself, verbally and in writing, is very intense and many people would find him intimidating.

My experience is that generally other residents of a residential property are reluctant to become involved in arbitrations by being witnesses or submitting signed statements. The fact that three other tenants of this building submitted oral or written evidence is a strong indication of their discomfort with the tenant. In making this statement I am not forgetting that a current tenant filed a statement helpful to the tenant and a past tenant filed a statement against the landlord.

The landlord's evidence really disclosed a history of irritations with the tenant's actions over the course of this tenancy – parking in the wrong place, doing gardening work when the landlord asked him not too, washing his vehicles too often, taking up too much of the common areas, etc. In and of themselves, those complaints may or may not have comprised sufficient grounds for ending this tenancy.

However, it is the tenant's behaviour since he was served with the two 1 Month Notices to End Tenancy for Cause that illustrated and emphasized the witnesses' description of the tenant as being scary, threatening and a bully.

Instead of just focusing on the explanation for behaviours complained about – such as the landlord's letter of 2012 – the tenant assembled a collection of highly prejudicial and potentially damaging statements about the landlord. Even if true – and no finding is made on that issue - many of these statements are totally unrelated to this tenancy, either by geography or time. He has distributed these statements to other tenants of the building; a step that was not required for the conduct of this hearing. Most significantly of all he has engaged in a campaign to contact the landlord's wife after she has made it clear that she wants nothing to do with him.

This behaviour does represent a significant interference and unreasonable disturbance of the landlord. Accordingly, I find that the landlord does have cause to end this tenancy and that the 1 Month Notice to End Tenancy for Cause dated January 19, 2015 is valid.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the dispute resolution officer must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession.

The landlord did make an oral request for an order of possession. The order is stated to be effective two days after service on the tenant. If the tenant has not offered and/or the landlord has not accepted the March rent the order may be enforced immediately. If the March rent has been accepted by the landlord "for use and occupation only" the order may not be enforced until the end of March. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.

As I have ordered that this tenancy is ending, a decision on the other issues raised by the tenant is not required.

Conclusion

The 1 Month Notice to End Tenancy for Cause dated January 19, 2015 is valid and an order of possession has been granted to the landlord.

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: March 02, 2015

Residential Tenancy Branch