



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Li-Car Management Group
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that the tenants have lived in the building in question for more than 20 years. The rental unit is owned by parties who were previously married and for most of the tenancy, the tenants dealt exclusively with the husband. Upon the dissolution of the owners' marriage, the wife, MS, began dealing with the tenants.

In 2014, M.S. appointed LCM, a property management company, to act as her agents with respect to the property. The tenants testified that they understood that LCM would be collecting rent and performing repairs but that they had no authority to act for MS on any other issues. MS did not appear at the hearing but submitted a letter in which she asserted that she has repeatedly advised the tenants that they should deal exclusively with LCM. The tenants agreed that they had had a number of conversations with MS after 2014 and did not dispute that she told them not to contact her any longer, but they still insisted that LCM's authority is limited to collecting rent and performing repairs.

The parties agreed that in November 2014, the tenant KC attended at LCM's office to pay rent. They further agreed that she received a receipt from LCM. LCM presented 3 staff members who testified that KC became irate, yelled and swore at staff members and demanded that they stamp her receipt as she did not believe it to be an official receipt unless it was stamped. LCM's staff members testified that they each explained to KC that they did not have a stamp and that the receipt was effective without one.

They testified that KC remained in the office for approximately 40 minutes and continued her verbally abusive behaviour in front of other tenants who were in attendance to pay their rent. KC testified that she requested that the receipt be stamped and that if she raised her voice, it was only because she is hard of hearing. She testified that she left the office after only a few minutes. LCM's staff members testified that after KC left the office, she returned and again angrily demanded that her receipt be stamped. LCM's staff member RK testified that she explained again to KC that they did not have a stamp for receipts and told her that the police would be summoned if she did not leave the office. KC testified that she was shocked that LCM's staff would threaten police involvement when she had simply asked a question. She testified that she believed LCM's behaviour to be unprofessional and that after this point, she became terrified of the management company.

The parties agreed that on December 23, the landlord posted on the tenants' door a notice of entry advising that LCM would enter the unit on January 21 for an inspection.

The landlord testified that on January 6, tenants who lived in the rental unit immediately adjacent to the subject unit contacted the landlord to complain that KC and her son AC were harassing them. AP is one of the neighbours who complained and she appeared at the hearing to testify. AP testified that she moved next door to KC and AC in December 2014 and that since that time, she has been continually harassed by them. She testified that KC repeatedly told them to shovel snow from their front steps in order to keep the basement from flooding. She stated that she has also witnessed KC throwing snow on to other people's driveways. AC delivers the local paper and AP testified that he refuses to deliver the paper to her mailbox. AP testified that she has been so disturbed by the actions of KC and AC, that she is moving at the end of this month.

KC and AC testified that they simply reminded AP to shovel snow because that unit had previously had problems with flooding and they wanted to prevent a recurrence. AC testified that he did not deliver the paper to AP because he was concerned that the flyers which came with the paper would blow away.

LCM's agent testified that on January 6, a letter (dated December 29) was posted to the door of the rental unit reminding the tenants that they needed to be mindful of their neighbours. Specifically, the letter stated: "We have received complaints of your behavior towards your neighbors. They are aware of their responsibilities as tenants. You cannot be telling them how to take care of their home as you are not their landlord."

The tenants stated that they did not know what this letter meant and had no idea what behaviour they were expected to change. They further testified that they found this

letter threatening and unprofessional and KC testified that it terrified her. They testified that they contacted the owner and complained to her about LCM's behaviour.

LCM's agents testified that after the owner of the unit contacted them to let them know that the tenants were repeatedly contacting her, on January 8 they posted to the door of the rental unit another letter reminding the tenants that they needed to be respectful of their neighbours and reminding the tenants not to contact the owner of the rental unit but to address concerns to LCM. Specifically, the letter stated: "Please also remember not to bother the tenants in the rental unit next to you. They are aware of their responsibilities as tenants and they are not to be harassed. If this behavior is to continue, we will issue Breach Letters which can result in one (1) month notice to end tenancy."

LCM's agents testified that after having served the January 6 letter, they received further complaints from AP and in response served on the tenants a breach letter on January 8, 2015. The letter quoted a clause from their tenancy agreement which prohibits the tenants from harassing others and stated "You must stop all communication with the tenant next to you. Any further complaints that we receive about you will result in a one (1) month notice to end tenancy."

The tenants stated that again, they did not know what these letters meant and did not know how the landlord expected them to change their behaviour. KC testified that this letter further frightened her and AC testified that he found the letter to be threatening and unprofessional. He testified that he contacted LCM for an explanation of the letter but did not receive a response to his queries. Both tenants testified that they again contacted the owner to complain about LCM.

On January 12, the tenants wrote a letter to LCM in which they stated that they wanted to know the details of the complaints made against them by AP and demanding that AP receive the same breach letter as they had issues with her. They stated in the letter that LCM's agent was dismissive of their complaint about AP and stated that the response was unprofessional. The letter also provided details about AC's refusal to deliver newspapers to AP. The letter went on to state that because LCM had issued the breach letter and had not issued a breach letter to AP, the tenants had contacted the RCMP. They further advised that because they believed LCM's staff to be hostile toward them because they would not accede to the tenants' requests, they believed it would be unsafe for them to allow LCM to enter the residence.

On January 21, LCM's agents attempted to enter the rental unit pursuant to the notice of entry they had given the tenants on December 23. The parties agreed that the tenants refused entry. The tenants testified that they refused entry because they believed LCM

did not have the authority to conduct an inspection, because they believed LCM's behaviour to be unprofessional and because KC was terrified of LCM because of their threatening letters and believed they would harm her. She likened their request for entry to a rape.

LCM gave the tenants a second breach letter on January 21. LCM's agent DF testified that he served the breach letter and that when AC answered the door, AC took the letter, crumpled it, threw it at DF and slammed the door. The landlord then posted to the door of the rental unit a new notice of entry advising that they would inspect the unit on January 26, 2015. The January 21 breach letter states that the refusal of entry is a breach of the tenancy agreement and advised that if further access was denied, it would result in the issuance of a 1 month notice to end tenancy.

AC denied having crumpled and thrown the breach letter. The parties agreed that the tenants again denied the landlord access to the unit on January 26. In response to this second refusal of entry, on January 26 LCM served the tenants with a one month notice to end tenancy for cause (the "Notice"). The Notice states that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord and that they have breached a material term of the tenancy agreement and have not corrected the situation despite written notice to do so.

Analysis

When tenants dispute the cause alleged in a notice to end tenancy, the burden rests with the landlord to prove that there are grounds to end the tenancy.

First addressing the issues between the tenants and AP, I find that there is insufficient evidence to prove that the tenants have unreasonably disturbed AP. I accept that it must be annoying for AP to have to tolerate someone advising her to shovel snow, but I am unable to find on the evidence that this disturbance is significant or unreasonable. I find that the issue with the newspapers falls outside the realm of the tenancy relationship and I have not considered that issue as it is irrelevant.

3 staff members of LCM testified that KC's behaviour in November was aggressive, angry and abusive. While KC denied having remained in the office for 40 minutes and insisted that she only made polite requests, I do not accept her version of events. I find it unlikely that the staff would manufacture this story and I find it unlikely that their recollections would be so consistent if the story had been invented. I find it more likely that KC's behaviour in November was disruptive and abusive to the point that LCM had no choice but to threaten to telephone the RCMP.

Had this been the only incidence of the tenants' misbehaviour, this may not have been sufficient to substantiate the Notice. However, the tenants have been repeatedly told that LCM is acting as the agent of the landlord and they have refused to accept LCM's authority. I do not accept that the tenants could reasonably have operated under the belief that LCM's authority was limited to collecting rent and performing repairs. I find that the tenants had numerous conversations with the owner and were told repeatedly that she was not dealing with tenancy issues but had hired LCM to act on her behalf. The tenants do not have the option of choosing not to deal with the landlord's agent. If the tenants believed that the agent is acting inappropriately, they may file an application for dispute resolution and request that an arbitrator order the agent to comply with the Act and tenancy agreement.

I find absolutely no evidence whatsoever that LCM acted inappropriately. I find that each breach letter clearly stated that the tenants should stop telling their neighbour how to maintain their home and I find that this was sufficient information to instruct the tenants on how to adjust their behaviour. I further find that the breach letters very clearly stated that the owner had appointed LCM as her agent. There can be no way in which the tenants could have misunderstood this message.

I find that the tenants had no reasonable reason to feel that their safety would be in jeopardy as a result of allowing LCM's agents to inspect the unit. The letters and breach letters issued by the landlord were only threatening in that they warned the tenants that there would be legal consequences should the tenants continue to ignore their responsibilities under the Act. I find that in all other respects, LCM's actions were reasonable and cannot be interpreted as threatening. KC's contention that LCM's request to enter could be likened to a rape is both offensive and unfounded.

I find it more likely than not that when AC received the January 21 breach letter, he crumpled it and threw it at DF. I have arrived at this conclusion because it is not only consistent with his attitude toward LCM and its agents, but because the tenants included with their evidence every breach letter except for the January 21 breach letter which leads me to believe they did not have it because AC threw it at DF.

I find that the tenants illegally refused entry to the landlord's agent after having received 2 legal notices of entry. I further find that the tenants received a breach letter advising that they had breached a material term of their tenancy and they chose to disregard it rather than correct their behaviour.

I find that the landlords have established grounds to end the tenancy and I therefore dismiss the application for an order cancelling the Notice.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenants must be served with the order of possession. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I have discretion under the Act to set the date of the end of the tenancy to a date other than what appears on the Notice. Because the effective date of the Notice has passed and because this is a long term tenancy and I expect the tenants may experience some stress in relocating after such a long tenancy, I find it appropriate to set the end of tenancy date at April 30, 2015. The tenants will be required to pay rent in the month of April as per the tenancy agreement. The tenants are also obligated to allow LCM entry into the unit provided they provide written notice.

Conclusion

The Notice is confirmed, the tenants' application is dismissed and the landlord is granted an order of possession effective April 30, 2015.

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 06, 2015

Residential Tenancy Branch

