



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DENWOOD HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Preliminary Issues

At the outset of this hearing the Landlord submitted the corrected spelling of his first name. Accordingly, the style of cause was amended to show the correct spelling of the Landlord's first name, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on February 10, 2015, by the Tenant to cancel a 1 Month Notice to end tenancy issued for cause.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Despite the above explanation, the Tenant interrupted the Landlord's submission and asked to speak. I reminded the Tenant that he was advised not to interrupt, and I instructed him to take notes until the floor was turned back to him. The Tenant did not interrupt for the remainder of this hearing.

Each party gave affirmed testimony and the Landlord confirmed receipt of the Tenant's application and evidence that had been sent by registered mail. The Landlord testified that his evidence was personally served upon the Tenant on Sunday March 1, 2015. The Landlord submitted that he was delayed in serving his evidence to the Tenant because he was busy.

The Tenant confirmed receipt of the Landlord's evidence and argued that he did not receive it in person; rather, he found it posted to his door on March 2, 2015, four days prior to this hearing. The Tenant argued that despite him having read the Landlord's evidence it was not submitted within the required timeframes.

The Residential Tenancy Branch Rules of Procedure (hereinafter referred to as the Rules of Procedure), # 3.15 stipulates that the respondent must ensure documents and

digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

Based on the above, I found that the Landlord's evidence had not been served in accordance with # 3.15 of the Rules of Procedure. Accordingly, I declined to consider the Landlord's documentary evidence and informed the parties that I would consider the Landlord's oral testimony, the Tenants documentary evidence and the Tenant's oral testimony.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy for cause issued January 31, 2015 be upheld or cancelled?

Background and Evidence

The undisputed evidence was that the Tenant has occupied the rental property as of January 1, 2013. No formal tenancy agreement was entered into; however, the Landlord did sign an Intent to Rent form in order to have the Tenant's Income Assistance paid directly to the Landlord, in the amount of \$375.00. Rent is payable on or before the first of each month and the Tenant was required to pay \$187.50 as the security deposit; as that was what the Landlord wrote on the Intent to Rent form.

The Landlord described the Tenant's rental unit as being a bedroom located in a 3 bedroom single detached home, with access to common living spaces. The Landlord submitted that the other two bedrooms are rented to other tenants under separate Intent to Rent forms/or agreements, and all tenants share the rest of the house and yard as common living space.

The Landlord testified that he had personally served the Tenant with a 1 Month Notice on January 31, 2015, that was to be effective February 28, 2015, as per the copy of the Notice that was provided in the Tenant's evidence. The 1 Month Notice was issued pursuant to Section 47(1) of the Act for the following reasons:

- Tenant is repeatedly late paying rent
- 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
- Put the Landlord's property at significant risk
- Tenant has 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
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.

Upon review of the reasons for issuing the Notice the Landlord testified that he was withdrawing the first reason, "Tenant is repeatedly late paying rent", because he could only find record of one late payment.

For the remaining reasons for issuing the Notice, the Landlord testified that over the last two years the Tenant has been rude to the Landlord, on occasion. The Landlord pointed to the language used in the Tenant's letter to the Landlord that was provided in the Tenant's evidence to support this allegation.

The Landlord then referenced a letter written by another tenant on February 23, 2015, which was that tenant's 30 day notice to end his tenancy in March 2015, because "he can't tolerate living with the Tenant because he does not feel safe due to the Tenant assaulting him and locking him in his room." The Landlord did not know the specifics about these evidence but argued that he had been previously told about those occurrences.

The Landlord asserted that he had received prior complaints about this Tenant which primarily related to events which occurred when the Tenant was drunk. He submitted that he understood that the Tenant has had a problem with drinking which may be the cause of the majority of the complaints he received. He also noted that there had been several occasions when the police had been called and that the Tenant had been removed from the rental property until the next day. He argued that the police would not provide him with file numbers or reports without him going through a Freedom of Information request.

Upon further clarification the Landlord stated that he had never issued the Tenant any written warnings about his behaviour and had never issued him a prior eviction notice. The Landlord has never attended the rental unit when he received alleged complaints from other tenants and submitted that he was of the opinion that the three occupants would have to work out issues amongst themselves in order to be able to live together. I asked the Landlord what had occurred to cause him to issue the eviction Notice on January 31, 2015, and he responded in general terms, regarding the Tenant's alleged behaviours, relating to prior periods when the Tenant had been drinking.

I then asked the Landlord how the Tenant would have known he would be evicted at the end of January 2015. The Landlord responded by simply saying that the Tenant was an

adult and ought to know he needed to act in a mature manner. He argued that the Tenant had been removed by police on two separate occasions over the past two years; however, the Landlord could not provide dates on when these events allegedly occurred.

The Landlord also spoke about being advised that the Tenant had done some electrical work without his permission, when the Tenant replaced the bathroom fan. He argued that the Tenant had been interfering with prospective tenants who came to view the house; however, the Landlord could not provide specifics of when these events allegedly occurred. He also suggested that the Tenant left water running in the back yard, last year and again after the Notice had been served.

I asked the Landlord what had changed to cause him to issue the Tenant an eviction notice at this time. The Landlord responded by saying the Tenant is "now a pain in the butt".

The Tenant testified that he does have a drinking problem and confirmed that he had been removed from the rental unit by police on two previous occasions. He argued that every tenant in that house has or has had a substance abuse problem. He submitted that when they get into disagreements the police have a policy that they remove one of the people to manage the situation. The Tenant acknowledged that he had spoken to prospective tenants about the house being non-smoking and the requirement to prepay hydro. He denied that those conversations could be considered interfering with prospective tenants or intended to encourage them from wanting to move into the house; rather he was simply explaining the rules.

The Tenant pointed to his documentary evidence which included, among other things, a copy of his written statement and a January 26, 2015 written request for repairs. The Tenant submitted that he had put his repair requests in writing. He said he asked the tenant who primarily deals with the Landlord to give the Landlord his letter. He argued that the Landlord served him the eviction Notice because of his written repair request.

In closing, the Landlord confirmed that he has known that the roof has required repairs for approximately the past two years. He argued that he has been moving forward with repairs, as evidence of the past work he has performed. However, he does not have the funds to replace the roof at this time. The Landlord confirmed receiving the Tenant's written repair request and denied that request was the reason for issuing the eviction Notice.

I concluded the hearing and confirmed the addresses that my Decision was to be sent to for each party, at which time the Landlord interrupted by saying he was not provided a full opportunity to be heard because he was not given the chance to read his written evidence. The Landlord was then afforded the opportunity to read his written submission and a letter written by another tenant with his notice to end his tenancy as of March 31, 2015. This additional evidence read by the Landlord spoke in general terms of past events that had allegedly occurred, as had previously been referenced or

submitted by the Landlord during his initial oral testimony. The Landlord then referenced new evidence which pertained to a letter dated November 28, 2013, which was another tenant's short notice to end his tenancy due to behaviours displayed by the Tenant at that time.

The Tenant stated that he understood that if he acted inappropriately or in a manner that would interfere with the Landlord or another tenant in the future, and if the Landlord was able to prove those events, then this Decision could be used to support grounds for an eviction at that time. He said that he understood that he has now received a formal warning.

The Landlord then interjected that if the Notice was upheld he was requesting an Order of Possession effective March 30, 2015, as March rent had already been paid.

Analysis

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

Upon review of the 1 Month Notice to End Tenancy issued January 31, 2015, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons.

The Landlord withdrew the reason that the Notice had been issued because the Tenant was repeatedly late paying rent.

Estoppel is a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial. The rationale behind estoppel is to prevent injustice owing to inconsistency.

In this case the undisputed evidence was that the Tenant had displayed behaviours over the past two years that may be considered inappropriate at times when he had

consumed alcohol. Despite the Landlord receiving complaints about those issues, at no time had the Tenant been issued a warning or been put on notice that if the behaviours continued he would be evicted. Rather, the evidence suggests that the Landlord took a very relaxed approach and chose to leave the matters to the tenants to work out amongst themselves. Accordingly, I find the Landlord has been estopped from evicting the Tenant at this time, as the Landlord did not act in a consistent manner by informing the Tenant that his behaviours would be grounds for a future eviction. Rather, in absence of any written warnings, I find there was no way for the Tenant to know he would be evicted.

I find the Landlord provided insufficient evidence to support any of the reasons for which the Notice had been issued. Therefore, I uphold the Tenant's application and I cancel the 1 Month Notice issued January 31, 2015. .

Furthermore, I do not consider the issuance of the 1 Month Notice to have coincidentally occurred five days after the Tenant submitted a written request for repairs. Rather, I accept the Tenant's submission that the Notice was issued in retaliation of his written request for repairs. This may also be supported by the Landlord's submission that the Notice was issued because the Tenant has now become a "pain in the butt".

In light of the above, I caution the Landlord that under section 95(2) of the Act, any person who coerces, threatens, intimidates or harasses a tenant from making an application under the Act, or for seeking or obtaining a remedy under the Act, may be found to have committed an offence and is subject to a fine or administrative penalty.

Conclusion

The 1 Month Notice to end tenancy for cause issued January 31, 2015, is HEREBY CANCELLED and is of no force or effect. This tenancy continues until such time as it is ended in accordance with the 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: March 06, 2015

Residential Tenancy Branch

