



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Raamco International Properties Canadian Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, MT, FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause, for more time to apply to set aside a Notice to End Tenancy; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that he delivered the Application for Dispute Resolution and the Notice of Hearing to the Landlord's office sometime in February of 2015. The Agent for the Landlord stated that these documents were delivered to the office on February 25, 2015.

On March 02, 2015 the Landlord submitted documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that these documents were posted at the rental unit on March 02, 2015. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On March 05, 2015 the Tenant submitted a copy of the Landlord's evidence package to the Residential Tenancy Branch. The Tenant stated that these documents were not served to the Landlord.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside and should the Tenant be granted more time to apply to set aside this Notice?

Background and Evidence

The Landlord and the Tenant agree that they have a tenancy agreement that requires the Tenant to pay monthly rent of \$880.00 by the first day of each month.

The Agent for the Landlord stated that on January 20, 2015 he posted a One Month Notice to End Tenancy for Cause, dated January 20, 2015, on the door of the rental unit. The Assistant Manager stated that she observed the posting of the Notice.

The Tenant stated that he did not locate a Notice to End Tenancy posted on the door of his rental unit.

The Agent for the Landlord stated that on February 25, 2015 he posted a Notice of Final Opportunity to Schedule a Condition Inspection on the door of the rental unit. The Tenant stated that he received this Notice on February 25, 2015.

The Landlord and the Tenant agree that on February 25, 2015 the Tenant went to the Landlord's office to discuss the Notice of Final Opportunity to Schedule a Condition Inspection. The Tenant stated that during this discussion he learned that a One Month Notice to End Tenancy for Cause had been served, at which time the Agent for the Landlord provided him with a copy of the Notice to End Tenancy. The Agent for the Landlord stated that he did provide the Tenant with a copy of the Notice to End Tenancy on February 25, 2015.

The reasons cited for ending the tenancy on the Notice to End Tenancy were that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord; that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; and that the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after being given written notice to do so. The Landlord contends that the alleged disturbances are a breach of a material term of the tenancy agreement.

The Agent for the Landlord stated that the Landlord wishes to end this tenancy, in part, because an occupant of the residential complex with the initials "A.F." has reported that the Tenant is disturbing her.

The Landlord submitted a written report from the occupant with the initials "A.F.", dated September 26, 2014. In this report the occupant declared that the Tenant contacted her on September 16, 2014 and that on September 26, 2014 she noticed that he had spit on her mother's vehicle. She declared that she has witnessed him do the same thing to other vehicles.

The Landlord submitted an undated written report from the occupant with the initials "A.F.". In this report the occupant declared that for the past month she has been receiving "harassing texts" from the Tenant; that he has posted her personal information and slanderous statements on a website; and that he has urinated on her mother's

vehicle.

The Landlord submitted an undated written report from the occupant with the initials "A.F.". In this report the occupant declared that the Tenant has been "harassing" her by sending text messages and contacting her at work. She declared that on February 25, 2015 he banged loudly on her door but was exiting the building by the time she answered the door.

The Agent for the Landlord stated that the occupant with the initials "A.F." is vacating the on March 31, 2015.

The Tenant stated that he has never spit or urinated on a vehicle in the residential complex and that he has not being calling the occupant with the initials "A.F." at her place of employment. He stated that the occupant with the initials "A.F." is a former girlfriend and he has been texting in an effort to reconcile, but he contends he has not been harassing or slandering her.

The Agent for the Landlord stated that on September 27, 2014 he was driving into the residential complex when he almost collided with the Tenant who was riding his bicycle. He stated that the Tenant stopped and yelled profanities at him. The Landlord submitted a copy of a letter, dated September 29, 2014, in which the Tenant was warned that continued disturbances of this nature could result in the end of his tenancy.

The Tenant stated that he did not stop and speak with the Agent for the Landlord after this incident and he did not use profanities. He stated that he received the letter, dated September 29, 2014, but he did not dispute it until February 25, 2015 when he was discussing the Landlord's intent to end the tenancy with the Agent for the Landlord.

The Agent for the Landlord stated that a woman living above the Tenant reported a noise disturbance on May 17, 2014. The Tenant acknowledged that he had an argument with his girlfriend on May 17, 2013 and that the police attended the rental unit in response to a report of that dispute. He stated that no charges were laid by the police.

The Landlord submitted a copy of rude note regarding the Tenant's scooter that the Agent for the Landlord stated was left on the office door on February 15, 2015. The Tenant stated that he did write this note but he left it in the parking area where he stored his scooter.

The Agent for the Landlord stated that on March 19, 2015 he observed the Tenant ripping up notices that he been posted on the bulletin board by the Landlord. The Tenant denies this allegation.

Analysis

I find it entirely possible that the Agent for the Landlord was being truthful when he

stated he posted a One Month Notice to End Tenancy on the door of the rental unit on January 20, 2015 and that the Tenant was also being truthful when he stated he did not receive this Notice to End Tenancy, given that it could have been removed by a third party. I therefore cannot conclude that the Tenant received the Notice to End Tenancy that was posted on January 20, 2015.

On the basis of the undisputed evidence, I find that the Tenant did receive the One Month Notice to End Tenancy, dated January 20, 2015, on February 25, 2015. As the Tenant applied to dispute the Notice to End Tenancy on February 25, 2015 I find that he applied to dispute it within ten days and there is no need to consider his application for more time to apply to set aside this Notice.

Section 47(2) of the *Act* stipulates that a One Month Notice to End Tenancy for Cause must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As I have concluded that the Tenant received the One Month Notice to End Tenancy, dated January 20, 2015, on February 25, 2015 and rent is due on the first of each month, the earliest effective date that the Notice is March 31, 2015.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy is March 31, 2015.

I favour the testimony of the Agent for the Landlord, who stated that on September 27, 2014 the Tenant used profanities and yelled at him after the pair nearly collided, over the Tenant's testimony that he did not stop or yell profanities after this incident. I favour the testimony of the Agent for the Landlord, in large part, because his testimony is corroborated by the letter dated September 29, 2014. While I find this behaviour unacceptable, I find that this isolated incident is not grounds to end a tenancy.

On the basis of the undisputed evidence, I find that the Tenant was involved in a domestic dispute on May 17, 2013 which disturbed at least one occupant of the residential complex. Given the length of time between this incident and the disturbance that occurred on September 29, 2014, I find that even when both incidents are taken into consideration the Landlord has insufficient grounds to end this tenancy.

In determining this matter I have placed limited weight on the written reports from the occupant with the initials "A.F". As the occupant did not attend the hearing to explain how she knows the Tenant urinated or spit on her mother's vehicle, I am unable to determine whether her conclusion that the Tenant is responsible for these acts is based on direct knowledge or mere speculation. Given that the Tenant denies the allegation, I find that there is insufficient evidence to conclude that he is responsible for these acts. As there is insufficient evidence he is responsible for these acts, I am unable to end the tenancy for this reason.

While I accept that the occupant with the initials "A.F." has observed the Tenant spit on vehicles, her written report does not establish that he has done so on the residential complex. Although I may be inclined to end a tenancy if the Tenant was observed spitting on vehicles parked in the residential complex or belonging to occupants/guests of the residential complex, I am unable to end this tenancy without more information regarding the occupant's observations.

While I accept that the occupant with the initials "A.F." feels she has been harassed/slandered by the Tenant, I am unable to conclude that he has sent harassing texts or posted harassing information about her on the internet. When a landlord is ending a tenancy on the basis of such actions I find it reasonable for a landlord to submit copies of the electronic messages, so they can be independently assessed to determine the nature of the messages. In the absence of such evidence, I find it difficult to conclude that the Tenant has been harassing the occupant with the initials "A.F." and I am therefore unable to end this tenancy as a result of harassment.

Even if I concluded that the Tenant banged loudly on the rental unit of the occupant with the initials "A.F." on February 25, 2015, I would not uphold this Notice to End Tenancy on that basis. This alleged event occurred after the Notice to End Tenancy was issued on January 20, 2015 and was not, therefore, grounds to serve this Notice.

Although I find the note the Tenant wrote regarding his scooter to be wholly inappropriate, I cannot uphold this Notice to End Tenancy on the basis of the note. As this note was written after the Notice to End Tenancy was issued on January 20, 2015, I cannot conclude that it was grounds to serve this Notice.

Even if I concluded that on March 19, 2015 the Tenant threw away notices the Landlord had posted on a bulletin board, I would not uphold this Notice to End Tenancy on that basis. This alleged event occurred after the Notice to End Tenancy was issued on January 20, 2015 and was not, therefore, grounds to serve this Notice.

After considering all of the evidence submitted by the Landlord, I find that the Landlord has failed to establish that there were grounds to end this tenancy when the Notice to End Tenancy was issued on January 20, 2015. I therefore grant the Tenant's application to set aside this Notice to End Tenancy.

In determining this matter I took notice of the evidence that the occupant with the initials "A.F." is vacating the residential complex on March 31, 2015. I therefore find that the conflict between the Tenant and this party should no longer be a source of disturbance in the residential complex.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

As I have determined that the Landlord has failed to establish that it had grounds to end this tenancy when the Notice to End Tenancy was issued on January 20, 2015, I find that this tenancy shall continue until it is ended in accordance with the *Act*.

The Tenant is cautioned, however, regarding his future behaviour. In the event that the Tenant causes any disturbance that is similar to the allegations made during this hearing, it is entirely possible that the Landlord will have grounds to end this tenancy by serving another One Month Notice to End Tenancy.

Pursuant to section 72(2) of the *Act*, I hereby authorize the Tenant to reduce one monthly rent payment by \$50.00 in compensation for the fee for filing this Application for Dispute Resolution.

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 25, 2015

Residential Tenancy Branch