Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant filed under the Residential Tenancy Act (the "Act").

The landlord's application is seeking orders as follows:

1. For an order of possession; and
2. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 1 Month Notice to End Tenancy for Cause (the "Notice"); and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice issued on February 13, 2015, be cancelled?
Is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on October 1, 2014. Rent in the amount of $2,695.00 was payable on the first of each month. The tenant paid a security deposit of $1,347.50.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on March 31, 2015.

The reason stated in the Notice was 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; and
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord testified that prior to entering into a tenancy agreement with the tenant, the tenant was informed that the rental unit below them was being fully renovated. The landlord stated that the tenant also wanted a renovation completed to their rental unit such as having a new bathroom installed. The landlord stated that the tenant was informed if they still wanted to move-in to the rental unit, the renovation could be done while they are living there. The landlord stated as this was a major decision prior to the tenant moving in they included a term in the tenancy agreement, "that the tenant will allow the landlord to do any necessary repairs/improvements, etc. to [address moved] without recourse or repayment, while the tenant is living there."

The landlord testified that the tenant breached the tenancy agreement and the Act by significantly interfering with the landlords right to conduct business on two occasions resulting in his cost to do the work being increased. The landlord stated that the relationship is no longer salvageable as the tenant sent a letter on January 26, 2015, making accusations and unreasonable demands.

The landlord testified the first incident that occurred was on January 10, 2015, when the occupant LN did not like the plants that the landscaper was using and started to yell at the landscaper and then the male tenant got involved and threatened the landscaper. The landlord stated that the landscapers left the property and were refusing to return.

Filed in evidence is a hand written letter, from RS, who is one of the landscapers, and is at tab 6- exhibit 1, in the landlord's evidence, the letter reads in part,

> "after approximately two weeks of landscaping the gardens for [landlord]… My son [name] and I were standing at the front of the house. We were discussing where to put the new plants and the upstairs tenants plants. A man and lady were smoking outside. We asked the older lady, where she would like her plants planted in the garden as [landlord] had told us to do. Suddenly as I was putting plants (in the pots) on the garden where I wanted [name] to put them, the woman became very, very confrontational. She said "I don't want any of those ugly fucking plants here. I tried to explain… as she scared me with this outburst, that they will look nice and we are also going to use your plants. She continued to argue with me. [name] quickly said "Mum lets not continue with the conversation." He then said "if you have a problem with us planting these plants please speak to [landlord] about it. He then said "we are just doing our job" he then politely said to both, because at this point the man had joined in verbally accosting us. "it seems so strange that you are so upset as [landlord] is putting a gorgeous chandelier at your entranceway". As soon as [name] sad this, we were about to walk away and he darted towards [name] in a very, very aggressive manner, and loudly said into [name] face... As if to attack him. "lets me tell you something, I don't give a fuck about any fucking chandelier." [name]looked very scared and backed up, the said "let me tell you something get out of my face." … I said to [name] let's get out of here, we left and told [landlord] about it and we said were not going to work on property if the man was home…."
>
> [Reproduced as written]

The landlord testified that on January 26, 2015, he received a 5 page email from the tenant which he found to be demanding and threating.

Filed in evidence at tab 4 in the landlord's evidence, is a copy email, which reads in part,

> "In your e-mail[landlord] you clearly state the tenants don't make the decisions **here but I beg to differ**…"
>
> "The landlord must give the tenants a minimum of 24 hours written notice to enter the premises. He must state that the purpose of the disruption and give a specific time. **The tenant must first grant permission to the landlord to do so**"
>
> [Reproduced as written]
> **[My emphasis added]**

The landlord testified that the tenant received regular updates on the scheduling of contractors. The landlord stated on January 30, 2015, the tenant was given notice that the painter and the person who would be doing the stucco would be attending on January 31, 2015 and in the same letter the tenant was informed the electrician would be attending on February 2, 2015.

The landlord testified that there were no issues with the painter or stucco person attending on those date. However, when the electrician attended on February 2, 2015, he was denied access to install the chandelier as the tenant told him that they would not be allowing any work in the house today. Filed in evidence is the schedule of work, Filed in evidence is a letter from the electrician, tab 13 - exhibit 18, which supports the landlord's testimony.

Filed in evidence is a further 4 page letter from the carpenter, at tab 19, to support the landlord's position that the tenant was notified in advance, and access was denied, which reads in part,

> " [landlord] then told [tenant] that he had given him 48 hours' prior notice in an email dated January 30th, telling him that the electrician would be in Monday morning to install the chandelier and the he never received anything back for [tenant] to the contrary. [tenant] then told [landlord] **"that he had informed him in advance of 24 hours** and that he has to send his approval. **If I don't approve in writing it doesn't happen. I don't approve so it won't happen today**. In the event you or anyone else does otherwise I have a direct line to the police and they have a file".
>
> [Reproduced as written]
> **[My emphasis added]**

The landlord testified that the tenant had also posted a notice on this door, at tab 14 - exhibit 20b, barring access to the rental unit, the letter in part reads,

> **"[landlord] needs to ask and receive permission for workers to enter. I [tenant] have not given said permission**. In the event anyone enters the premises without my permission and the authority police – will be contacted. Dated: Feb2/2015 signed by the [tenant]"
>
> [Reproduced as written]
> **[My emphasis added]**

Filed in the landlord evidence is an email dated February 3, 2015, written by the tenant and sent to the landlord, which reads in part,

> "… Bye the way just to clarify I didn't refuse entry **you simply didn't have written permission**…."
>
> [Reproduced as written]
> **[My emphasis added**

The tenant testified that on January 10, 2015, the landscaper was speaking disrespectfully to his sister-in-law LN. The tenant stated that he walked over and told the male landscaper to stop and the landscaper threatened to "punch my lights outs". The tenant stated that he responded by saying, "let's go", and raised his fist to fight. The tenant stated he contacted the police and they told him his actions were justified.

Filed in evidence in support of the tenant is a statement of LN, the tenant's sister-in-law, which reads in part,

> "I have been a witness including a 31 year old landscaper threatening my 64 year old brother-in-law. He was very rude and insulting to me and when my brother-in-law [name] intervened, he threatened physical force. Despite [tenant's] request that [landlord] not bring him back he did anyway creating an uncomfortable experience for everyone."
>
> [Reproduced as written]

The tenant testified that he then immediately went to see the landlord and told him of the incident and further told him he does not want the landscapers back as they feel threatened by them. The tenant stated that he landlord was disrespectful by not honouring their wishes.

The tenant testified that on February 2, 2014, he had not received notice from the landlord that the electrician would be attending and he did not want them here on this particular day.

The landlord argued that the tenant never came to speak to him about the January 10, 2015, incident. The landlord stated that he was informed by the female landscaper that they were leaving and not returning.

The landlord argued that the tenant had admitted receiving the 24 hours' notice to the carpenter, but was not granted access because he had not given written permission.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

A Notice issued pursuant to section 47 of the Act, must comply with section 52 of the Act – Form and content.

Upon my review of the Notice, I find the Notice complies with the requirements of section 52 of the Act.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Although both parties have provided a different version of the incident that occurred on January 10, 2015, I find I prefer the evidence of the landlord over the tenant's for the following reasons.

I find the written statement of RS, who is one of the landscapers, compelling and provides very specific detail of what was said and done on that particular day. When reading the statement it has the ring of truth as it speaks to the actions of all the parties that were involved, including that the occupant NL was very confrontational as she did not want the plants installed.

The statement also details a comment made by her son about the chandelier that is to be installed by the electrician, which may not have been his place to state; however, this statement appeared to enrage the male tenant.

If the tenant's version was to be accepted, the landscapers were simply rude to the female tenant for no apparent reason, and he intervened to defend her and at that point he was threatened; however, no details or explanation were given to what was actually said by the landscapers or what they felt was rude.

As it simply could be construed as rude, when the landscapers did not want to continue with the conversation with the tenant or occupant and informed them to speak to the landlord. At that point they both should have left the landscapers to complete their work; rather than to allow it to escalate to the point where the tenant said "let's go" raising his fist to fight the landscaper.

There was no evidence that the landscaper made any action to fight, even if I accept there was a verbal threat made to "punch his lights out". Threats of violence are not acceptable in any relationship, but I find it even more egregious when physical violence is shown such a raising fists to fight. The tenant should have walked away, rather than to engage in inappropriate behavior.

Further, I find the tenant's version conflicting with the statement of RS, as she indicated that the tenant verbally accosted them and then became enraged after the mention of the chandelier, as if to attack them. RS statement continues to have the ring of truth as a few days later, the issue of the chandelier again arose when the tenant refused the electrician access to install the lighting; however, I will address that issue later in this decision.

I also note, the tenant then took the opportunity after the incident of January 10, 2015, to contact their own landscaper and they informed the landlord by email on January 11, 2015, that this landscaper was willing and able to do the landscaping work on the following Tuesday; again this was not the tenant's place to interfere and make decisions for the landlord or contact any contractors.

The email also indicates that someone would be available to be there in order for the plants to be integrated in a reasonable manner. This statement further confirms the validity of RS statement, as it would mean the placement of the plants by the original landscaper was found to unreasonable, confirming that the occupant LN, had been upset with the plants that were to be placed in the garden on January 10, 2014. I find based on the balance of probability that on January 10, 2015, the tenant and the occupant LN, significantly interfered with the landlord's rights to do business.

I also accept that the tenant interfered with the landlord's right to do business when they refused to allow the electrician access into the rental unit to complete the work on February 2, 2015.

Although the tenant during the hearing stated he did not get the 24 hours' notice, I find that not to be credible, as it was clear by the documentary evidence, **to which my emphasis was added,** that the tenant simply felt justified in denying access as the tenant had not given his written permission.

However, there is no requirement under the Act that the landlord must obtain the tenant's written permission to attend the residential property to have the work done. The landlord has the right under the Act, to enter the residential property and/or the rental unit to repair or maintain their property as they determine appropriate without the tenant's permission provided the landlord has provided the tenant with written notice at least 24 hours prior to entry. I find the tenant has breached the Act, by interfering with the landlord's rights to enter the rental unit and to make repair on February 2, 2014.

Further, the email correspondence between the parties prior to the tenancy agreement being signed fully disclosed to the tenant that renovation were to take place on the property, including the work in the lower

rental unit, landscaping, painting, deck repairs and installing a chandelier. The renovation also included an additional new bathroom to be added to the tenant's rent unit solely for the benefit of the tenants at considerable cost to the landlord.

The tenant still wanted to move into the rental premise knowing this. The tenancy agreement was signed and a term in the agreement was written, "the tenant agreed to allow the landlord to do any necessary repairs/improvements, etc. to [address] without recourse and without repayments, while they are tenants".

While this is not a term you would normally expect to see in a tenancy agreement, I find it reasonable under the circumstance based on the prior disclosures. This agreement would still require the landlord to provide the tenant with 24 hour notice of the work, which I find by the evidence the landlord has done so. Therefore, I find the tenant further breached the tenancy agreement by not allowing the landlord access to do the necessary work after sufficient notice was given.

In light of the above, I find the Notice issued on February 13, 2015, has been proven by the landlord and is valid and enforceable.

Therefore, I dismiss the tenant's application to cancel the Notice issued on February 13, 2015. The tenancy will end on March 31, 2015, in accordance with the Act.

Since I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession **effective March 31, 2015**, **at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court if the tenant fails to vacate the property in accordance with this order.

Since the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee from the landlord.

Since the landlord has been successful with their application, I find the landlord is entitled to recover the cost of the filing fee from the tenant. Therefore, I grant the landlord a monetary order in the amount of **$50.00** and the landlord is authorized to deduct that amount from the tenant's security deposit in full satisfaction of this award.

Conclusion

The tenant's application to cancel the Notice, issued on February 13, 2015 is dismissed.

The landlord is granted an order of possession.

I grant the landlord a monetary order for the cost of filing their application and the landlord is authorized to deduct that amount from the tenant's' security deposit in full satisfaction of this award.

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 23, 2015

Residential Tenancy Branch