



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

This decision is largely based upon verbal testimony presented during the hearing as neither party served evidence prior to the hearing other than a copy of the subject Notice to End Tenancy.

The tenant referred to a previous dispute resolution proceeding in his submissions and I have referenced that file number on the cover page of this decision. Although a decision had been issued on June 4, 2015 with respect to that proceeding both parties stated they had yet to receive a copy in the mail from the Branch. That proceeding dealt with issues pertaining to a rent increase and the tenant's loss of exclusive use of the laundry facilities. Those issues were not re-visited during this proceeding except to hear background information as it relates to the events that lead to the issuance of the Notice to End Tenancy.

During the hearing, the landlord orally requested an Order of Possession and I have considered whether the landlord is entitled to such, as provided under section 55 of the Act.

Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?

Background and Evidence

The tenancy commenced on March 1, 2012. The tenant is required to pay rent on the 1st day of every month.

On April 23, 2015 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause with a stated effective date of May 31, 2015 (the Notice). The Notice indicates two reasons for ending the tenancy. The stated reasons for ending the tenancy are as follows:

- 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
- 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

Although I heard a considerable amount of verbal testimony, I have only summarized the parties' respective submissions with a view to brevity.

As background information, I heard from the parties that the rental unit is the upper portion of a house that the tenant currently shares with his girlfriend. The lower level of the house was largely unfinished and uninhabited up until October 2014 when the landlord began residing in the lower level. The tenant had enjoyed exclusive use of the laundry area located in the lower area of the house until February 2015 when the landlord created an access hole in the wall of the laundry room so that he could gain access to the laundry facilities from the lower level. The landlord had discussed his intentions to create shared access to the laundry room with the tenant in November or December 2014. The landlord created an access hole in the laundry room wall in February 2015 when the tenant was away from home working in another province. Also, in February 2015 the landlord attempted to increase the rent by 10% by way of an email. Upon returning home from working in the other province the tenant was upset at seeing the access hole in the laundry room wall. There were two confrontations between the parties that followed which are the subject of this dispute.

Landlord's reasons for ending the tenancy

The landlord testified that he issued the Notice because the tenant made threatening comments to him on two occasions after the landlord created shared access to the laundry room. The landlord described how, approximately two weeks after the tenant returned home from the other province, the tenant knocked on his door loudly and proceeded to inform the landlord that he was angry about the situation and that he had rights as a tenant. The landlord suggested the parties write their respective viewpoints in a letter to each other. During that conversation the tenant told the landlord that he had better install a lock on his entry door. The landlord took the comment about installing a lock on his door as a threat.

The landlord stated that he never received the requested letter from the tenant but that the tenant served him with the Application for Dispute Resolution for the previous dispute resolution proceeding approximately a week later. The landlord testified that the tenant suggested the parties try to settle their dispute between themselves but the landlord was of the position that enlisting the assistance of an Arbitrator was more preferable since the two parties are too aggressive to resolve the dispute themselves. The landlord proceeded to tell the tenant that he felt threatened by the tenant's comments about installing a lock. In response, the tenant referred to the size difference between the two of them and stated that settling the dispute between them would not be a problem. After that the parties separated. Upon further reflection the landlord considered the tenant's remarks about their size difference to be a threat and decided to go to the police the following day. The landlord stated that the police were not satisfied that the tenant's statements constituted a threat that would warrant action from them. Nevertheless, the landlord felt threatened and has not used the laundry room since.

Ultimately, the landlord feels uncomfortable in his own home and seeks to end the tenancy. The landlord requested an Order of Possession and was agreeable to an Order that is effective one full month after service upon the tenant.

Tenant's responses and position

The tenant acknowledged that he was angry upon seeing the access hole created in the laundry room wall upon returning home from working in another province but that he waited for his girlfriend to return home a couple of weeks later before approaching the landlord. The tenant explained that he learned that the loss of the exclusive use of the laundry facilities should have been accomplished by way of proper notice from the landlord and a rent reduction but that he received an email from the landlord attempting to increase the rent instead. The tenant explained that he had set up an appointment to discuss the matters with the landlord but when the scheduled time for the meeting passed the tenant contacted the landlord who advised him he was not available for their meeting. The tenant acknowledged that in response he went to the landlord's door and knocked loudly. After some discussion he did tell the landlord that he should install a lock on his door. The tenant described the door to the landlord's unit was only a "salon door" that swung closed without any sort of latch.

For the second confrontation, the tenant described how the parties were near the laundry room after the tenant served the landlord with the Application for Dispute Resolution for the previous dispute resolution proceeding. The tenant described how the landlord kept trying to discuss matters as the tenant was backing away. The tenant acknowledged that he did refer to the size difference between the two of them in response to the landlord's suggestion that the tenant had made a threatening comment during their previous confrontation and to communicate that a physical confrontation between the two of them would be preposterous.

The tenant affirmed that he had no intention to threaten the landlord, that the police have never come to speak to him, and that the landlord is free to use the laundry room. The tenant

suggested that setting a laundry schedule would work well so as that the parties would avoid running into each other unexpectedly or having a conflict about the use of the laundry machines.

During the hearing, the tenant also offered the landlord an apology for getting angry with him. The tenant recognized that the landlord has rights as the property owner but also wants the landlord to recognize that he has rights as the tenant. The tenant confirmed that this dispute has taught him many things about his rights and obligations as a tenant and in the future if another dispute arises he will enlist other means to resolve the dispute such as asking his girlfriend to speak to the landlord on his behalf or filing an Application with the Residential Tenancy Branch failing that.

The tenant stated that he is actively looking for alternative accommodation but that the rental market is very tight at the moment due to construction of a new hospital in the small village. In the meantime, the tenant seeks to have the tenancy continue.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove that the tenancy should end for the reason(s) indicated on the Notice.

The burden of proof is based on the balance of probabilities. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their burden.

In this case, both parties provided consistent testimony as to the words that were spoken by the tenant to the landlord on two occasions. The dispute revolved around the landlord's interpretation that the words spoken by the tenant were threatening to him. The issue for me to determine is whether the tenant's statements are sufficient to end the tenancy for the reasons stated on the Notice to End Tenancy.

The landlord indicated two different reasons for ending the tenancy on the Notice to End Tenancy. One of the stated reasons asserts that the tenant had engaged in "illegal activity." I heard of one instance where the landlord went to the police to report the remarks made to him by the tenant and the landlord acknowledged that the police conveyed to him that they were unconvinced the remarks would be considered threatening. Further, it was undisputed that the police took no further action upon hearing the landlord's complaints. Thus, I find the landlord's assertion that the tenant engaged in illegal activity is not sufficiently supported by the evidence before me.

The other reason indicated on the Notice by the landlord is that the tenant "seriously jeopardized the health or safety or lawful right of another occupant or the landlord" which is a reason for ending a tenancy under section 47 of the Act. It is important to note that in interpreting legislation each word must be given meaning. As such, in order to end the tenancy

for this stated reason, the landlord must demonstrate that the tenant's actions were such that seriously jeopardized the health or safety or lawful rights of others on the property.

With respect to the tenant's first comment that the landlord should install a lock on his door, I do not consider that statement to seriously jeopardize the health or safety or lawful right of the landlord. Considering a second living unit was recently developed including a newly created common area, and the landlord did not have a lock on the door to his living unit, I find the tenant's suggestion actually a good one so as to protect both parties.

With respect to the second incident where the tenant referred to the size difference between the two of them, considering the landlord thought more about the comment before going to the police the following day and the police took no action upon hearing the landlord's complaints, I find the landlord did not satisfy me that the tenant made remarks that would be considered threatening in a serious or significant way.

While I appreciate the tenant acted angrily and aggressively based upon undisputed testimony, I also heard from the landlord that he has a tendency to be aggressive as well. As such, I find it more likely that both parties have acted aggressively toward each other and both parties would be well served to consider themselves cautioned that repeatedly aggressive behaviour toward the other is unacceptable and may be grounds for further repercussions in the future. Also, it is not lost on me that the landlord had just been served with the tenant's Application for Dispute Resolution for the previous dispute resolution proceeding before issuing the Notice to End Tenancy. Considering all of these factors, I find I am unsatisfied that the tenant's remarks to the landlord were seriously jeopardized the landlord's health or safety or lawful rights.

In light of the above, I find the landlord has not met his burden of proof and I cancel the 1 Month Notice issued on April 23, 2015 with the effect that this tenancy shall continue at this time. As I have cancelled the Notice to End Tenancy the landlord is not entitled to an Order of Possession and I do not provide one with this decision.

As the landlord and tenant now live in close proximity to each other with shared facilities, I encourage the parties to enlist methods of communication to avoid face-to-face confrontation. Both parties suggested alternatives that, in my view, may be helpful to avoid confrontations such as: communicating in writing; setting a laundry schedule; authorization for the tenant's girlfriend to act on his behalf; and, filing an Application for Dispute Resolution as necessary. Upon hearing from the tenant, I am satisfied that he is prepared to employ such alternative methods to resolve any future disputes that may arise between the parties during the remainder of the tenancy. Therefore, I am reasonably satisfied that the likelihood of a future altercation is greatly reduced.

As I am of the view that the actions of both parties lead to this dispute I order the landlord to compensate the tenant one-half of the \$50.00 filing fee the tenant paid for this proceeding. Therefore, I authorize the tenant to deduct \$25.00 from a future month's rent in satisfaction of this award.

Conclusion

The 1 Month Notice issued on April 23, 2015 has been cancelled and the tenancy continues at this time. The tenant has been authorized to deduct \$25.00 from a future month's rent to recover one-half of the filing fee paid for this proceeding.

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: June 12, 2015

Residential Tenancy Branch

