



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, FF
 CNC

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlords have applied for an Order of Possession for cause, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end the tenancy for cause.

The hearing did not conclude and was adjourned for a continuation of testimony. One of the landlords attended on both scheduled dates accompanied by legal counsel. The tenant also attended on both scheduled dates accompanied by a legal advocate. The parties each gave affirmed testimony and their representatives were given the opportunity to question the parties respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

At the outset of the hearing the landlord advised that the application for a monetary order for unpaid rent or utilities is withdrawn.

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the landlords established cause to issue a notice to end the tenancy?
- Should the notice to end the tenancy given by the landlord be cancelled?

Background and Evidence

The landlord testified that the tenant was already a tenant in the rental unit when the landlords purchased the rental property in about 2012, and had been there for about a year prior. The tenancy started as a fixed term, which has expired, and the tenancy is now on a month-to-month basis. Rent in the amount of \$870.00 per month is payable in advance on the 1st day of each month and there are currently no rental arrears. The landlords hold a security deposit in the amount of \$400.00 as well as a pet damage deposit in the amount of \$400.00 which were paid by the tenant at the outset of the tenancy. A copy of a tenancy agreement has been provided.

The landlord further testified issues arose between the tenant and another tenant (hereafter referred to as the neighbour) due to the neighbour's dog leaving a mess in front of the tenant's unit. The tenant told the neighbour to clean up after his dog, and the landlords received a number of emails from the tenant, including photographs of the dog feces. The neighbour was very apologetic but the tenant was not satisfied. Every time the dog made a mess, the landlords would get a photograph of feces and it seemed to escalate. The landlords also received a video and some vulgar language in the emails. The landlord always responded to the tenant's emails complaining about the neighbour, and the landlord asked the neighbour to ensure that he cleaned up after the dog and the neighbour would respond that he was doing his best and was training the dog.

The neighbour felt threatened by the tenant's volatile personality, and the tenant threatened the neighbour's girlfriend. The tenant also hit a guest of the neighbour in the laundry room telling the guest he couldn't be there and hit him in the back of the head with a Christmas tree and called police. The police told the tenant it was not his responsibility to deal with who entered the laundry room. The tenant has threatened the neighbour's grandparents who were at the rental property working in the garden and put something on the tenant's outdoor table. The tenant swore at them and told them off. They also felt threatened.

The tenant also complained to the landlord that the neighbour was parking in a parking spot near the rental unit, however the tenant doesn't have a vehicle. There are 3 rental units and a coach house and 3 parking spaces including one behind the coach house that the tenant resides in. The tenant had also told the landlord that the parking spot belonged to the tenant and the landlord put up a no parking sign to accommodate him, assuming it had been provided to him by the previous landlord, but that turned out to not be the case. The landlord checked the lease agreement after the fact and discovered that the tenant had no claim to it. The landlord believes that the parking dispute was a problem because of the tenant's obsession with the neighbour.

Numerous emails were exchanged between the parties and the neighbour, and have been provided for this hearing and the landlords encouraged the neighbour and the tenant to work things out. The landlords met with the neighbour on 2 occasions at least and communicated on the phone. No other tenants have complained about the neighbour.

The landlords did not do regular inspections of the rental unit but arranged to meet with the tenant basically as an introduction meeting after the landlords purchased the rental property. However, a couple of years ago the landlords attended at the rental unit, knocked numerous times and received no response. The landlords were aware that the tenant was suffering depression and the landlords were concerned about his well-being. They tried to open the door and the tenant became abusive and quickly closed the door. The landlords called police to check on him.

Recently, the landlords sent the tenant a notice with more than 24 hours notice to inspect. Again they knocked numerous times and received no response. The landlord tried to open the door but the locks had been changed. Thinking they had a wrong key, they tried it on other units and the keys worked. The landlords went back to the rental unit and 2 officers were there. They said that they received a complaint from the tenant that someone had tried to break into the rental unit. The police knocked on the door, the tenant opened it a crack, and saw the landlords, then started raving about what terrible landlords they were. The police had a long conversation with the tenant and calmed him down and told the landlord to issue another inspection notice and return another time.

The landlords did issue another inspection notice and when they arrived at 2:00 p.m., the tenant had a big, intimidating friend waiting outside for the landlords, and although the tenant's friend did not go inside it was difficult to conduct an inspection with him watching and the tenant started to film the landlords. The landlords asked the tenant to stop filming, but he continued. The inspection was not properly carried out as a result. However, an odour of cigarette smoke was noted which is not allowed in any of the suites as per the tenancy agreement, and the neighbour had also complained of smoke in the tenant's unit. The other landlord felt it was prudent that the landlords film the suite and review it later.

The landlords served the tenant with a 1 Month Notice to End Tenancy for Cause by posting it to the door of the rental unit, but the landlord does not recall when. A copy of the notice has been provided and it is dated May 22, 2015 and contains an effective date of vacancy of June 30, 2015. The reasons for issuing the notice are:

- 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.

Other confrontations have taken place where the neighbour's guests have felt nervous, threatened and have attracted the attention of police. The landlords have tried to be responsible and accommodating landlords to all tenants, however the landlord feels nervous knocking on the tenant's door because he's unsure what kind of reaction he will get. Because of the tenant's volatile personality it could be a concern to other tenants, guests and the landlords' property. The landlord has had conversations with the tenant and the parties have exchanged numerous emails, and the landlord has seen the tenant's outbursts. The landlords seek an Order of Possession of the rental unit.

The tenant testified that he has lived in the coach house since February, 2011 and the landlords purchased the property in about 2012. Since purchasing, the landlords have not been responsive to the tenant's concerns. With respect to the neighbour, the landlords have sent emails to him and talked to him but have not taken any action and problems have persisted. The tenant has been abused by the neighbour since he moved in. The tenant denies ever threatening or being aggressive toward anyone, but has had to call police because the tenant was threatened by the neighbour and his grandparents. The tenant does not and has not accepted apologies from the neighbour because the tenant does not believe he is sincere.

The tenant does not have a car but in May, 2013 had a work vehicle that he parked behind the rental unit. The tenant has not had a vehicle since May, 2013 but his guests park there. The tenant was informed by the previous landlord that the tenant could have it, although it's not written in the tenancy agreement.

The tenant also disagrees that anyone has smoked inside the rental unit. Some of his guests smoke, but the rule is strictly enforced to only smoke outside. Further, the tenant did not change the locks to the rental unit.

When the landlord attended the rental unit, there was only one landlord, and the tenant was in bed naked. The landlord illegally entered, and then called police because he wanted access to the rental unit through police.

Analysis

The *Residential Tenancy Act* sets out how a tenancy ends. In this case, the landlords have issued a 1 Month Notice to End Tenancy for Cause, and the onus is on the

landlords to establish that it was issued in accordance with the *Act*, which can include the reasons for issuing it. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing the notice are in dispute:

- 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.

The tenant takes the position that the landlords have not responded appropriately to the tenant's complaints other than writing emails and talking to the tenant and the neighbour. The landlords' position is that the landlords have gone to great lengths to try to settle the disputes between the tenant and the neighbour.

I have reviewed the tenancy agreements, and it's clear that parking in any specific spot has never been included with the rent. The tenant claims that the previous landlord told him he could park there, but there is no evidence of that. Numerous emails have been provided showing that the tenant was becoming less patient, and the landlord believes that the tenant has a fixation on the neighbour and continuously complains, however the parking issue, which was never a right of the tenant, has been the subject of some of the difficulties.

It is not for me to decide whether or not the landlords ought to have issued a notice to end the tenancy to the neighbour instead of the tenant, it is only for me to decide whether or not the landlords had cause to issue it to the tenant. Also, criminal charges are not necessary to establish a disturbance or cause to end a tenancy. The tenant did not deny hitting a guest of the neighbour in the back of the head with a Christmas tree or that police told the tenant it was not his responsibility to deal with who entered the laundry room. The tenant didn't deny swearing and telling off the neighbour's grandparents. The landlord testified that things have been escalating and despite the efforts of the landlords and apologies from the neighbour, the tenant refuses to accept it.

I am not satisfied that the landlords have established that the tenant has put the landlords' property at significant risk, but in the circumstances I am satisfied that the tenant's actions have disturbed other occupants and have seriously jeopardized the lawful right of another occupant.

The tenant's application is hereby dismissed, and I grant an Order of Possession in favour of the landlords on 2 days notice to the tenant.

Since the landlords have been successful with the application the landlords are also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$50.00.

The tenant's application is hereby dismissed.

These orders are final and binding and may be enforced.

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: July 31, 2015

Residential Tenancy Branch

