



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRILLIANT CIRCLE GROUP c/o FIRST SERVICE RESIDENTIAL BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution in which the Tenant sought to cancel a Notice to End Tenancy for Cause issued June 25, 2015 (the "Notice") and to recover the filing fee.

Both parties appeared at the hearing. In attendance for the landlord was A.U., the Property Manager, and J.G., the Building Manager. The Tenant attended the hearing with her counsel, D.V. The hearing process was explained and the participants were asked if they had any questions. The participants provided affirmed testimony and the parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and witnesses, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Residential Tenancy Branch Rules of Procedure Rule 11.1 provides that when a Tenant applies to set aside a Notice to End Tenancy, the respondent Landlord must present their case first.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

This application involved a long term tenancy of 27 years. Introduced in evidence was a copy of the Residential Tenancy Agreement indicating the tenancy began March 1,

1988. At that time, monthly rent was payable in the amount of \$375.00. Neither party submitted any evidence as to the current monthly rent.

LANDLORD'S EVIDENCE

A.U. testified on behalf of the Landlord and confirmed that the Landlord issued a 1 Month Notice to End Tenancy for Cause on June 25, 2015. The reasons cited in the Notice 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 (the "Notice").

Section 47 (f) provides that a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within 10 days after the date the tenant receives the notice. The Tenant made this application for dispute resolution on July 2, 2015 and as such made her application in time.

A.U. stated that the reasons for issuing the Notice were because the Landlord believes the Tenant has engaged in "disruptive yelling and banging against the wall, which disturbs another occupant of the rental building such that he is only able to sleep a couple hours a night." The Landlord confirmed that all complaints were from the same person, the renter residing in the rental unit above the subject rental unit, identified only by his first initial "D" (hereinafter referred to as the "Complainant").

Introduced in evidence was a warning letter dated June 18, 2015 wherein the Tenant was informed that a complaint had been made regarding "*disruptive loud conversations at the building [which were] observed at 6:15 a.m. June 17, 2015 for approximately 45 minutes*". The Landlord informed the Tenant that this was considered in breach of her tenancy agreement and that continuation of such behaviour may result in the termination of her tenancy.

On June 23, 2015 the Landlord issued a second warning letter. In this letter, the Landlord reports that they received a noise complaint regarding disruptive loud conversations at the building on June 21, 2015 at 8:15 a.m. and 2:15 p.m. and on June 23, 2015 from 2:00 a.m. to 8:00 a.m.

Counsel for the Tenant confirmed that the June 23, 2015 letter was not received by the Tenant.

On June 25, 2015 the Landlord sent a further letter to the Tenant wherein the Landlord wrote:

“Further to our letters on January 21, 2014, June 18, 2015 and June 23, 2015, we terminate your tenancy at [name of apartment building] effective July 31, 2015.

The Landlord has provided ample opportunity to rectify the situation. Please find the attached Notice to End your tenancy.”

The June 25, 2015 letter appears to have accompanied the Notice and references a letter sent January 20, 2014.

Also introduced in evidence by the Landlord were copies of emails from the Complainant, including an email exchange between the Landlord and the Complainant wherein the Complainant gives the Landlord permission to submit the Complainant's emails to the RTB as well as to the Tenant.

Counsel for the Tenant confirmed that only part of the correspondence from the Complainant had been provided to the Tenant; as such I had him confirm which emails were provided to him.

Introduced in evidence was correspondence dated July 30, 2015 wherein counsel for the Tenant requested production of all documents concerning the complaints received about the Tenant in December 2013 and January 2014. Also introduced in evidence was an email from counsel for the Tenant dated August 6, 2015 wherein he again requests documents from 2013 and 2014. At the hearing, counsel for the Tenant confirmed the Landlord had not complied with this request for production of documents. A.U. confirmed that as she had not sent the evidence package to the Tenant, she could not confirm what documents had been sent.

I informed the parties that I would not consider documents which had not been provided to the Tenant and for clarity, I did not consider the following:

- January 20, 2014 letter from the Complainant to the Landlord;
- January 21, 2014 letter from the Complainant to the Landlord;
- January 21, 2014 letter from the Complainant to the Landlord;
- August 11, 2014 letter from the Complainant to the Landlord;
- August 25, 2014 letter from the Complainant to the Landlord;
- September 15, 2014 letter from the Complainant to the Landlord;
- September 15, 2014 letter from the Complainant to the Landlord;

- August 15, 2014 letter from the Complainant to the Landlord;
- Undated letter from Complainant to Landlord titled "Previous Recordings Given to [building manager]";
- January 13, 2014 letter from Complainant to the Landlord; and
- January 18, 2014 letter from Complainant to the Landlord.

The Building Manager, J.G., testified on behalf of the Landlord. When asked if he had received any complaints from *any other* occupants of the building in relation to the Tenant he stated he had not. When asked if he had personally witnessed any of the behaviour alleged by the Complainant, he confirmed he had not. When asked if he suggested the Notice be issued, he stated he did not.

The email correspondence which was provided to counsel for the Tenant contains allegations from the Complainant such as:

(Undated, unsigned)

"All day [Tenant] yelling and occasional banging stating I want to go home and being told no. They are trying to convince her to pay me some money to pay the lawyer etc. Later in the afternoon she states she won't move out of her suite and told she has no choice. She keeps saying no and at 8:15pm she starts again stating I rapped her and her mom and some other person telling her that did not happen. She keeps insisting it did and someone says we got to get her out of her."

(email dated July 14, 2015 2:45:33)

"We have 18 days before she has to move out of the building and 29 days before the hearing. She continues to say I rapped her even though her family tell her to stop saying this as the police have proven by using the GPS on my [phone] that she is lying. She continues to state she is not going to give any money to cover your costs or mine, that she hates me, states what about her, she wishes I was dead, I don't care when her family states if she does not cover theses costs I can sue her and also put her in jail for a long time. Again, she says I don't care. I do not believe her family is going to get her to change her stance. Thus do we sue and press criminal charges for all of this and breaking into my apartment and accessing my private health and bank info which I hear her family warn her is highly illegal and how would we prove this.

...

She continues to tell her parents that she is going home and they tell her no and also states she will not move and no can make her so the 31st should be an interesting day.

...

She continues to yell and bang and was pugging my bathroom sink somehow which I reported to [Landlord] and I will see in the morning if it is unplugged.

...

Also, if any money is exchanged I want it all to go through you so I cannot be accused of anything...

The Complainant was not called as a witness at the hearing. I informed the Landlord during the hearing that I had concerns about the Complainant not being in attendance to provide affirmed evidence and be subject to cross examination.

TENANT'S EVIDENCE

Counsel for the Tenant submitted that the allegations made by the Complainant indicate a mental disorder on the part of the Complainant. He stated that the Complainant has alleged the Tenant has installed microphones and cameras, has accessed his bank accounts and computer, plugged his sink, and accused him of raping her—all of which are completely false and fabricated by the Complainant. Counsel for the Tenant submitted that it was egregious that the Landlord would issue the Notice and pursue an end to this long term tenancy when the allegations are from someone who is clearly suffering from a mental disorder.

Counsel for the Tenant confirmed he intended to cross examine the Complainant and was very surprised he was not at the hearing to provide affirmed evidence.

The Tenant denied all allegations made by the Complainant. She testified that she did not know the Complainant and had only spoken to him once in 2007 when she asked him (through a hand written note) to remove his shoes when walking on the floor above her rental unit in hopes that it would minimize noise.

The Tenant confirmed that she had received communication from the Landlord in 2014 regarding the Complainant's allegations, (although at that time she did not know who made the complaints) but that she believed they were not about her, and she believed the Complainant had simply misidentified the origin of the alleged noise. She also confirmed that she discussed this correspondence with the Building Manager and he looked into the complaints and found them unsupported. Further, when she did not receive any further communication from the Landlord she presumed that the issue had

been resolved. She stated that until she received the June 18, 2015 letter she was unaware that the Complainant had made further allegations.

The Tenant testified that she was not home at the time when the behaviour alleged by the Complainant, and referenced in the warning letters, were to have occurred. Introduced in evidence were copies of the Tenant's work schedule which confirmed she was not at the rental unit during these times.

The Tenant also testified that her parents separated 40 years ago and as such the Complainant's allegations that she is often arguing with her parents, is simply fabricated.

The Tenant further stated that she was shocked when she received the Notice as she has lived in the rental unit quietly for 26 years and she was very upset that the Landlord "ran with these imagined events" in their attempts to evict her.

The Tenant stated that she is fearful of the Complainant now that she has been informed of the nature of his allegations as well as her belief that he is now fixated on her. According to the Tenant the Complainant had also left disturbing letters under her mother's door (she occupies a rental unit on the same floor as the Complainant) which lead her to believe the Complainant is targeting her. Introduced in evidence were copies of the four letters and are reproduced as written:

(Written on the note was the following: put under [Tenant's mother's] door)

"June 18, 2015

Hi from your neighbour in [Complainant's rental unit number]

I am suggesting we meet to talk if you would like to do this. I would prefer that [the Tenant] not know we are meeting at this point. If we meet I would like it to be out in public like a bench in the park at the end of [street name] or some similar place you like. I can't meet today as I will be waiting for [phone company] to come and fix my internet but I am free any other time. Hope to talk to you soon and have a nice day.

[first name of Complainant]"

(Written on the note was the following: 1# 12 AM July 6th, 2015 put under door of [Tenant's mother])

"Everything is okay. Please come + talk to me + tell [property manager] this is a good thing for me to know."

(Written on the note was the following: July 6th, 2015 put under door of [Tenant's mother] #3)

"We can talk about trying to reverse [Tenant's] eviction if you as her mum feel this would be best, but she has to do the right thing & tell the police today."

(Written on the note was the following: July 6th, 2015 put under door of [Tenant's mother] #2)

"Tell her I love her + healing comes by talking, which I learned from my fosterkids."

The Tenant testified that immediately upon being informed of the allegations contained in the warning letters, she communicated to the Landlord that she believed these allegations were fabricated. She also informed the Landlord that the Complainant had been leaving the above mentioned notes for her mother. Introduced in evidence was an email from the Tenant to the Landlord sent on July 7, 2015 at 8:41 p.m. in reference to the above mentioned letters sent to her mother. In this letter the Tenant writes the following:

"...I went to work and called my mom from work as I usually do, as she is 73 and has lifelong health conditions and I am her care giver. I spoke with her and she was upset, as three different handwritten notes were put under her door, each one separately within 10 minutes. She read the notes to me and they were very disturbing. Including one that stated my name and a current eviction that I am fighting. I do not know who is complaining against me in-conjunction with the company. One of the notes had my name and the eviction reference on it. I "now" know it was [the Complainant]. Prior to this, a typed note was also put under my moms door from [the Complainant] on June 18th, 2015 asking her to meet him. My mom does not know this man nor would she ever meet him, romantic or otherwise. That note was also very odd and stated no specific intention but also had my name in it. So a total of 4 notes have been put under my moms door now from [the Complainant]..."

The Tenant testified that her mother has health issues which require the two of them to live in close proximity and that she does not wish to move from the rental unit which she has occupied for many years.

The Tenant further testified that she is quiet, seldom socializes and has never had any issues with any other occupants of the rental building. She stated that when she does socialize she goes out to friends as her apartment is very small. In support, the Tenant introduced in evidence was a letter from another occupant, K.M., who writes as follows:

“To whom it may concern,

I live across the hall from [the Tenant]. I have lived in the building for many years, and I have not heard any loud noise or loud conversations coming from [the Tenant’s] apartment in the time I have lived here. I have never had any noise issues with [the Tenant].

Yours Truly,

K.M.

July 1, 2015.”

Also introduced in evidence was a letter from the Tenant’s mother, D.M. dated July 22, 2015 wherein she also writes that the Tenant has a quiet lifestyle, and that the Tenant cares for her on behalf of the family.

The Tenant confirmed that she made a report to the police regarding the letters her mother received from the Complainant as well as the nature of the allegations made about the Tenant by the Complainant. Introduced in evidence was an email from the Tenant to the police dated July 23, 2015 wherein she sets out her concerns.

Also introduced in evidence was a covering letter from the police department enclosing a police file (portions of which were redacted pursuant to section 22(3)(b) of the *Freedom of Information and Protection of Privacy Act*) in which the following was noted on page 3 of the report:

“On 2015-07-15, police attended 22(3)(b) [address of rental building] to assist 22(3)(b) with concerns that his neighbour [Tenant] was putting cameras in his suite, stealing credit card and bank info, and personal passwords. Police spoke with [Tenant] who appeared normal and unsure why 22(3)(b) is making these

allegations. Police checked 22(3)(b) suite and could not see any cameras or tampering with the lock 22(3)(b).

The report continues on pages 4 and 5 as follows:

...
"[Tenant] resides in [rental unit] of the [rental building] and has lived here for the past 26 years.

There has been ongoing tenancy disputes between the two parties and [Tenant] is currently in the process of being evicted due to strange allegations made by 22(3)(b)

INCIDENT

On 2015-07-15, 22(3)(b) phoned police to report that [Tenant] had put cameras and microphones in his suite and was listening to everything that he was doing. 22(3)(b) also believes that [Tenant] is stealing information from his internet router, credit card and bank information, and personal passwords.

22(3)(b) told police that 22(3)(b).

Police spoke with [Tenant] in her suite, who stated that she is currently in the process of being evicted and is unsure why 22(3)(b) believes she is doing any of this. [Tenant] appeared very normal and reasonable to police. [Tenant] had copies of several notes that 22(3)(b) would slide under her mother's door [mother's rental unit number] that do not make much sense ("Meet me at the park bench outside to discuss our issues" "Tell her that I love her"). [Tenant] is concerned about 22(3)(b) mental health and does not do anything to taunt him. Police checked [Tenant's] suite and noted that there is not any camera equipment in there, nor does it appear that she has any knowledge of how to hack into computers, pic locks or any of the above.

22(3)(b).

Although the Tenant's father was available to testify, I declined to hear from him as I felt it was unnecessary.

At the end of the hearing, the Landlord stated that the Complainant would have given evidence if they had asked him to attend the hearing, and questioned whether it was too

late to call him. I informed the Landlord that the hearing had completed and that it was not appropriate to call the Complainant at that time.

Counsel for the Tenant confirmed they wished to seek aggravated damages from the Landlord as they believe the Landlord wrongfully issued the Notice. I informed the parties that no such monetary claim was before me, but that the Tenant was at liberty to apply for such relief.

Analysis

The Landlord cited the allegations made by the Complainant as being the reason for issuing the notice. As indicated during the hearing, the only evidence of the Tenant's alleged disturbing behaviour were the allegations made by the Complainant in emails and letters sent to the Landlord. The communication from 2014 was not provided to the Tenant and therefore not admissible. In any case, the allegations made by the Complainant are bizarre and outlandish. His communication to the Tenant's mother is disturbing. He did not appear at the hearing and was therefore not subject to cross examination.

The Landlord called the building manager as a witness who could not corroborate any of the allegations and confirmed that no other occupant, aside from the Complainant, had raised any concerns about the Tenant.

The Landlord appears to have made no efforts to follow up on the allegations or rationally weigh the probability of their truth.

The police investigated a complaint by the Complainant and found the Tenant to be "very normal and reasonable".

I also found the Tenant to be well-spoken and credible. I accept the Tenant's undisputed testimony that she has not engaged the behaviour alleged by the Complainant. Her work schedule confirms that she was not even in the rental unit during the times specified in the warning letters. She presented well, and was believable.

Further, another occupant of the rental building, as well as the Tenant's mother, wrote a letter in support of the Tenant and confirmed that she was quiet and not engaged in the alleged behaviour.

The Landlord bears the burden of proving the Notice should be upheld. In this case, I

find that the Landlord has failed to show that the Tenant has significantly interfered with or unreasonably disturbed another occupant. I find that the Landlord has not met the onus to prove their claim and as such the claim fails.

Accordingly, I grant the Tenant's request to cancel the Notice. The tenancy will continue until ended in accordance with the Act.

Conclusion

The application is granted and the Notice is set aside. The tenancy shall continue until 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: September 04, 2015

Residential Tenancy Branch

