



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Somerset Manor
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNR, MNSD, FF
 CNC

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord company has applied as against 2 tenants for an Order of Possession for Cause; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. One of the tenants has applied as against a named landlord for an order cancelling a notice to end the tenancy for cause.

Two agents for the landlord company and one of the tenants attended the hearing and each gave affirmed testimony. The landlords also called 2 witnesses and the tenant called 1 witness, all of whom gave affirmed testimony.

During the course of the hearing, the landlord withdrew the applications for a monetary order for unpaid rent or utilities and for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit.

Also, during the course of the hearing, the tenant agreed that the name of the landlord in the tenant's application for dispute resolution should read that of the landlord company, and I amend the application accordingly.

The parties were given the opportunity to question each other and the witnesses with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

The issues remaining to be decided are:

- Should the notice to end the tenancy for cause given by the landlord be cancelled?
- Has the landlord established that the notice to end the tenancy was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's first agent, (PB) testified that this month-to-month tenancy began on March 1, 2013 and the tenants still reside in the rental unit. Rent in the amount of \$650.00 per month is payable in advance on the 1st day of each month and there are currently no rental arrears. The landlord collected a security deposit in the amount of \$325.00 at the outset of the tenancy by one tenant, which was returned to that tenant, and the tenant who attended this hearing paid the landlord \$325.00 in March, 2014, which is still held in trust by the landlord. No pet damage deposit was collected, and a copy of the tenancy agreement has been provided.

The landlord's agent further testified that on August 14, 2015 the landlord personally served the tenant with a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided for this hearing. The notice is dated August 14, 2015 and contains an effective date of vacancy of September 30, 2015. The reason for issuing it is: "Tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord."

At the commencement of the hearing the landlord's agent advised that the landlord has never been served with the Tenant's Application for Dispute Resolution or any evidentiary material.

The rental complex contains 42 units, and the landlord's agents reside within the complex. Another tenant (hereafter referred to as the neighbour) called the landlord's agents near midnight on August 13, 2015 saying that the neighbour noticed someone throwing stones at a balcony or window and the person had a flashlight. The neighbour did not know which rental unit was targeted, however the fellow went around to the back and was yelling. The landlord's spouse went to talk to the fellow and returned saying that both agents would attend at the tenant's rental unit, which they did. The tenant answered the door and the landlords went inside. The tenant had been out of town and returned, but had the fellow's jacket and some clothing.

After the notice to end the tenancy was served, the landlord's agent saw the fellow's clothing and jacket on the ground below the tenant's balcony.

The second agent of the landlord (FJB) testified that he personally handed the notice to end the tenancy to the tenant. He further testified that this is not the first incident, and the landlord's agents have documented others.

The other tenant has gone out of province for work, and the tenant who attended this hearing is still in the rental unit. Both tenants are named in the tenancy agreement. The tenant and the fellow were out back at 3:00 a.m. and the landlord's agent has seen him at the elevator with the tenant. She had been out of town and returned with the fellow. When the windows were being hit with stones, the landlord's agent talked to the fellow but when police were mentioned, he disappeared and hasn't been back. The landlord's agents spoke to the tenant and while at the rental unit, he tried his key in the lock and it didn't work. He also observed a half dozen or so locks on the counter.

The landlord's agent further testified that the tenant has been "dragging in" other individuals. The night that the notice to end the tenancy was served, another guy was in the rental unit and the tenant said he was staying there. People have been running through the building, sitting in the bathroom of the lobby, all times of the day or night, and he's seen them with the tenant. Police have also attended, but the landlord's agent does not know why. Two days ago, the tenant was seen going out at 3:30 a.m. with 2 bicycles.

On another occasion the tenant purposely smashed her car door into another's vehicle. The landlord's agents reside on the 4th floor and their unit faces the parking lot. He observed the tenant getting out of the passenger seat and smashing the car door into the mini-van of another tenant, and the landlord's agents gave the neighbour another parking spot to put a space between them.

Things were fine before the other tenant went out of province for work, and since then it's been anything but. No other tenants have complained about disturbances, but the landlord's agent knows who comes and goes, and he himself has been disturbed.

The landlord's first witness (IG) is the owner of the rental complex, and does not reside there. He testified that he was in the lobby one day when the police arrived. The witness let them into the building and they went to the tenant's rental unit, but the witness does not know why they were there.

The witness also saw someone who lived in another building owned by the witness go to the tenant's rental unit. The witness knew the person was selling drugs.

The landlord's second witness (PE) testified that on August 13, 2015 she called the landlord's agents after hearing people throwing stones at a balcony window, and then saw a flashlight. The witness thought perhaps someone was breaking in, so she called the landlord's agents. The witness did not see the stones, just heard them and saw the flashlight. The witness is not sure exactly which apartment it was but assumes it was one at that part of the building. The witness' unit is at the end of the building.

The tenant's witness testified that she served the hearing package to one of the landlord's agents on Wednesday, August 26, 2015. She picked up the documents at the BC Access Centre and was given directions from the tenant as well as the landlords' apartment number and a brief description. The witness did not have to ring the bell to get into the building because someone was exiting so the door was open. The witness knocked on the door, a woman answered, the tenant said, "You've been served," and then left.

The tenant testified that she has not done anything wrong. There are 42 units in the complex and over the course of 3 years only one person has been disturbed, and not by the tenant but by someone in the yard. The tenant was not home, and when she returned the landlord knocked on the door and told the tenant it didn't look good for her. Police were called and no one was found. No one ever brought to the tenant's attention that someone's clothing was allegedly in her

apartment, and the tenant knows nothing about it. The person the landlord saw with the tenant at the elevator was a cab driver, and the tenant never saw a person in the yard.

The tenant works from 3:30 a.m. to 4:30 a.m. and has seen the landlord standing at the end of the hall, at the tenants' door, and feels that the landlord has it out for the tenant and has since the tenant's boyfriend went away to work. The landlord "lost it" when the incident in the parking lot took place and told the tenant he was going to get her out.

The tenant also testified that the landlord won't give a mailbox key to the tenant, and the tenant has been out of the province for 6 weeks, so documents have not been received. Before leaving, the tenant asked the landlords to change the locks and when the tenant returned, she received all keys except for the mailbox.

During the course of the hearing, the landlord's agent (FJB) became irate, angry, agitated and was cautioned with respect to his conduct. Near the end of the hearing, he was very disturbing; yelling and ranting.

Analysis

Firstly, with respect to service of the tenants' hearing package and application upon the landlord, the tenant has provided a witness who testified that the documents were served on August 26, 2015. The landlord's agent (PB) disputed that testimony and testified that no package was received, and I accept that. I found the landlord's agent (PB) to be believable and whoever was served by the witness was not the landlord's agent. I find that the tenant attempted to have the landlord served, but that service was not successful. The *Residential Tenancy Act* requires a party to serve the application within 3 days of making it, and the onus is on the serving party to ensure the other party is properly served. That has not been done in this case. However, the tenant testified that the landlord's application has not been received by the tenant because the landlord's agents have not provided the tenant with a key to the mailbox.

The *Residential Tenancy Act* specifies that a tenant must dispute a 1 Month Notice to End Tenancy for Cause within 10 days of receipt or the tenant is conclusively presumed to have accepted the end of the tenancy. I find that the tenant disputed the notice within the time prescribed, and as such, I cannot justify making a finding that the tenants are conclusively presumed to have accepted the end of the tenancy.

Where a tenant disputes a notice to end a tenancy the onus is on the landlord to establish that the notice was issued in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. However, I am not satisfied that the landlord had cause to issue it. I have reviewed the evidentiary material including notes

made by the landlord's agents. There is no evidence before me that the tenant has done anything wrong. There is no evidence that the tenant has harboured any undesirables, or that the tenant has unreasonably disturbed other occupants. The landlord's agent (FJB) testified that he was disturbed, however he also testified that he knows what goes on and who's in the building. There have been no excessive noise complaints, or disturbances of any kind, and the tenant keeps late hours due to her work. The evidence before me clearly shows the landlord has a short fuse, and I am not satisfied that any of the evidence is sufficient to warrant ending the tenancy.

The landlord's application is hereby dismissed and the tenancy continues.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for unpaid rent or utilities is hereby dismissed as withdrawn.

The landlord's application for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit is hereby dismissed as withdrawn.

The landlord's application for an Order of Possession is hereby dismissed and the tenancy continues.

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: October 13, 2015

Residential Tenancy Branch

