



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, CNC, FF

Introduction

This hearing dealt with crossed applications for dispute resolution.

The Tenant applied to cancel a one month Notice to End Tenancy issued for alleged cause and to recover the filing fee for the Application.

The Landlord applied to end the tenancy based on a one month Notice to End Tenancy for alleged cause, receive an order of possession and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 to me.

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

Preliminary Issues

The parties are involved in a different hearing before a different Arbitrator which has been adjourned to later in October 2015. The parties have been involved in two prior hearings as well. The file numbers are provided on the cover of this decision for ease of reference.

At one point in the hearing the Landlord referred to a copy of a police report that was not before me. The Tenant testified he had also not received this police report. As the Landlord had not provided this document in evidence to the Tenant or for the file, I did not hear this evidence. I explain this further below.

I note both parties had to be cautioned about interrupting the other during the hearing.

I also note that toward the end of the hearing the Landlord became quite argumentative and then disconnected her phone prior to the end of the hearing.

Lastly, there was a significant amount of time during the hearing in an attempt to mediate this dispute but ultimately the parties were unable to come to a settlement agreement.

Issue(s) to be Decided

Is the one month Notice to End Tenancy valid or should it be cancelled?

Background and Evidence

It is clear that this tenancy is fraught with problems and has been difficult for both parties for the past few months. The parties live in close proximity, with the Landlord occupying the upper floor of a property and the Tenant renting the lower suite.

This is the fourth matter between the parties that has come to the branch for dispute resolution, and one of these disputes continues as it is an adjourned matter.

Previous files have dealt with matters up to July of 2015, and I shall not recount these in great detail but it is necessary to provide some background herein.

In summary, the Tenant alleges that the Landlord has failed to make repairs to the rental unit and has created a lot of problems for him by making false reports to the police and to bylaw officers, and by having dogs in the area where he has to enter the rental unit.

The Landlord alleges that the Tenant is disturbing her with noise and has threatened her dogs.

This portion of the dispute began in July of 2015, shortly after a previous hearing was concluded.

The Landlord claims the Tenant was creating excessive noise, that he had his music playing, "as loud as a disco". On July 16, the Landlord wrote the Tenant and informed him there was excessive noise coming from the rental unit. She writes, "This is a

warning, I have provided a solution and this should take effect immediately.” Apparently the Landlord was referring to a Notice to End Tenancy posted to the door at the same time as the warning letter.

In this warning the Landlord writes she has a witness to the noise disturbances who has also witnessed the Landlord post the warning letter to the door of the rental unit. The Landlord writes she has posted a one month Notice to End Tenancy for cause to the rental unit door. I note that the only event the witness actually attests to seeing is the posting of the notice and letter to the door of the rental unit. There is no information from the alleged witness as to what noise she heard, or the date it was heard, etc.

The one month Notice to End Tenancy for cause is dated July 17, 2015, and alleges that the Tenant significantly interfered with or unreasonably disturbed another occupant or the Landlord, seriously jeopardized the health, safety or lawful right or interest of another occupant or the Landlord, and has engaged in an illegal activity which has adversely affected the quiet enjoyment, security, safety or physical wellbeing of another occupant or the Landlord, and the Tenant has caused extraordinary damage to the rental unit. (the “Notice”). The Notice has an effective date of August 31, 2015.

I note the Landlord had insufficient evidence of the Tenant causing damage to the rental unit and this portion of the claim is dismissed.

The Landlord testified that the Tenant had caused the noise disturbances on July 15 and 16, by playing his music very loud. The Landlord testified that the Tenant is creating a “ridiculous” ongoing disturbance with his noise and has been served with two noise violations by the local municipality. The Landlord further testified that there have been two attendances at the rental unit by the police due to these noise complaints.

The Landlord was unable to recount the dates of these violations as she testified that she had not brought any of the evidence she submitted to the branch and the Tenant, with her to work to refer to. She alleges the Tenant is a “major alcoholic” who cranks up his music very loud and sings along with it.

The Landlord also testified that the Tenant has threatened to kill her dogs as he says the dogs attacked him or his girlfriend. The Landlord alleges the Tenant swung a shovel at the dogs and her children were nearby, although she agrees he did not strike either the children or the pets.

The Landlord testified she has a fenced in area for the dogs in the back yard, although this is the same area that the Tenant has to access the rental unit from. The Landlord

testified that she has to take the dogs for walks on a leash as they cannot be left alone in the backyard with the Tenant there. She agrees that she and the Tenant share the backyard. She alleges that her children are afraid to go in the backyard due to the Tenant.

The Landlord then referred to a police report she alleges she entered into evidence with the branch. There is no record that the branch has received a copy of this police report. The Tenant testified he did not get a copy of the police report. The Landlord then tried to read a report during the hearing, which I declined to hear.

I explained to the Landlord that I found it affected her credibility that earlier in the hearing she testified that she had none of her evidence with her at work and minutes later the Landlord was attempting to read from documents she had at work and she alone had access to during the hearing.

The Tenant then testified that there had been an incident where three police officers had attended the rental unit and pulled him out of the shower. However, this incident related to a report the Landlord had made to the police that the Tenant had threatened her with some fence poles. This event was the subject matter of an earlier hearing between the parties before a different Arbitrator. The Tenant testified here that nothing came of this police attendance.

In evidence the Tenant has provided copies of two Bylaw Offence notices both dated August 10, 2015, issued for noise violations. The Tenant has also supplied copies of two notices of dispute that he has filed with the municipality intending to dispute the two Bylaw Offence notices. The Tenant has also supplied copies of reports he made to the municipality in regard to the Landlord's dogs.

The Tenant testified that he was not even in town at the times the two Bylaw Offence notices were issued for, and this is why he is disputing these. He alleges that the Landlord actually wrongly signed for these tickets with Canada Post and likely mislead the bylaw officers. He alleges that the tickets will be "quashed."

As to the threats against the Landlord's dogs, the Tenant testified that he reported the dogs to the local bylaw officers and the Landlord has now finally taken control of the dogs. He testified that he does not want to harm the dogs, but one of these dogs in particular acts very aggressively towards him and his girlfriend.

In evidence the Tenant has supplied a copy of a bylaw warning notice apparently given to the Landlord for having an aggressive dog and for keeping more than two dogs at the property. The Landlord argued this was just a warning notice to her and not a fine.

The Tenant testified there was an incident that occurred where the dogs came at his girlfriend one evening as she was leaving and he scared the dogs away with a shovel. The Tenant testified that he explained this to the bylaw officers and they said he was within his rights to protect himself and another person against the dogs. The Tenant testified he does not wish to harm the dogs, but if they attack him or his girlfriend he has a right to defend himself. He testified the Landlord is now keeping control over the dogs and he has no problems entering or exiting the rental unit while the dogs are under control.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Landlord had insufficient evidence to support the one month Notice and I cancel the Notice for the following reasons.

When a landlord makes an application to obtain an order of possession based on a notice to end tenancy and the tenant has applied to dispute the notice, the landlord has the burden to prove the reasons to end the tenancy on their notice are true and supported by credible evidence. The standard to prove a notice to end tenancy is based on the civil standard, that being a balance of probabilities.

In this instance, the burden of proof is on the Landlord to prove the Tenant violated the *Act*, regulation, or the tenancy agreement as alleged in the Notice.

It is important to note that 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 the onus to prove their claim and the claim fails.

It is clear that the Landlord and the Tenant do not get along and this tenancy is fraught with difficulties; however, I find the Landlord had insufficient evidence to prove the Tenant had created disturbances sufficient to support the Notice.

It is not enough that the Landlord wants to end the tenancy because she does not like the Tenant. A tenancy may only end in accordance with the *Act*. There are many reasons enumerated to end a tenancy in sections 46, 47, 48 and 49 of the *Act*, for example, repeated late payment of rents etc.

Unless the Landlord can prove one of the reasons listed in the Act to end the tenancy, I am not able to end a tenancy. I am not granted the authority to end a tenancy simply because the parties do not get along and/or the Landlord wants the Tenant to leave.

I find the Landlord did not provide sufficient evidence to prove there had been noise disturbances that significantly interfered with or unreasonably disturbed another occupant or the Landlord, or seriously jeopardized the health, safety or lawful right or interest of another occupant or the Landlord. There were no third party witnesses or witness statements that outlined the disturbances claimed of. While the Landlord did supply a letter with the signature of a witness to a posting on the door, and apparently a noise disturbance, there is simply not evidence from this alleged witness to confirm or support the claims of the Landlord as to these disturbances.

As to the threat against the dogs, I accept the testimony of the Tenant as to his protection of himself and his girlfriend. I found that the Tenant was sincere and forthright in his testimony that he wished no harm to come to the dogs, but he intended to protect himself and his visitors should the dogs attack. He testified that this threat has now been dealt with by the Landlord keeping the dogs inside and away from his entrance to the rental unit.

Furthermore, I am unable to find the Tenant has engaged in an illegal activity which has adversely affected the quiet enjoyment, security, safety or physical wellbeing of another occupant for two reasons.

Firstly, the Landlord is not entitled to quiet enjoyment under section 47(1)e(ii) of the Act, as it clearly pertains to another occupant and not the Landlord. Secondly, even if there was another occupant, the Tenant has disputed these bylaw notices and therefore he cannot be said to have engaged in an illegal activity until a conclusion has been reached. Simply put, the Tenant has been charged with something but the bylaw notices are not proven until the dispute of the Tenant against these charges has concluded.

For these reasons I find that the Notice is not valid. I dismiss the Application of the Landlord and allow the Application of the Tenant to cancel the Notice of July 17, 2015.

As the Tenant has been successful he is granted the return of his filing fee for the Application. The Tenant may deduct the sum of \$50.00 from a future rent payment.

Lastly, I would strongly encourage the parties to negotiate a resolution to this matter. In order to do this both parties must be willing to compromise and avoid further confrontations, or aggressive personalized behaviours. A tenancy is primarily a business relationship and the parties should act accordingly and avoid personal, verbal attacks upon each other.

Conclusion

As described above, the Landlord's Application is dismissed due to insufficient evidence. The Tenant has been successful in having the Notice to End Tenancy of July 17, 2015, cancelled. The Tenant may deduct \$50.00 from a future rent payment to recover the filing fee for the Application.

The parties are strongly encouraged to resolve this matter in a peaceful and respectful manner.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 06, 2015

Residential Tenancy Branch

