



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Delaney Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking more time to dispute a notice to end the tenancy, and for an order cancelling a notice to end the tenancy for cause.

The tenant and an agent for the landlord company attended the hearing, each gave affirmed testimony, and provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The landlord's agent also called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness 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.

Issue(s) to be Decided

- Should the tenant be granted more time than prescribed to dispute a notice to end the tenancy?
- Has the landlord established that the notice to end the tenancy given to the tenant was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent (hereafter referred to as the landlord) testified that this month-to-month tenancy began on April 1, 2015 and the tenant still resides in the rental unit. Rent in the amount of \$950.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$475.00 which is still held in trust by the landlord and no pet damage deposit was collected. A copy of the tenancy

agreement has been provided. The rental unit is one of 2 suites in a side-by-side duplex, and the other suite is also tenanted. The landlord does not reside on the rental property.

The landlord testified that on August 12, 2015 he served the tenant with a 1 Month Notice to End Tenancy for Cause by posting it to the door of the rental unit. A copy of the notice has been provided and it is dated August 12, 2015 and contains an effective date of vacancy of September 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;
- 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.

The landlord did not notice that the second bullet referred to illegal activity, and testified that he is not alleging that.

The landlord further testified that the tenant on the other side of the duplex is the landlord's witness (hereafter referred to as the witness) and has complained verbally and in writing to the landlord about the tenant. The landlord prepared a Word Document and copied and pasted emails from the neighbour into a document for this hearing, to illustrate the complaints in the neighbour's words and to make a running record. The issues have been discussed with the tenant, and some of the complaints involve the tenant's dog. The landlord has observed that, and due to other neighbours' complaints the landlord told the tenant that his dog has to go. Letters from other neighbours have also been provided, one of which states a concern is that the tenant stays up late drinking.

The landlord also testified that he has never seen the tenant drunk or excessively drinking, and the tenant was a tenant of the landlord in another rental complex previously. The witness has complained about all other tenants that have moved in next door with the exception of 1, and there have been 4. The tenant has cleaned up his property, but the witness does not.

The landlord has never had any issues with the tenant in either tenancy, and testified that he's "on the fence with this one" but is concerned that the neighbouring tenant, who is a long-term tenant will end her tenancy as a result of this tenant's behaviour.

The landlord's witness testified that she is the neighbour of the tenant residing in the duplex with her 10 year old daughter. She testified that the tenant has loud parties, has disturbed her with drinking, swearing, loud talking, an aggressive dog urinating on her lawn, and having inappropriate conversations with her daughter. The tenant parties frequently since the day they moved in, having 3 or 4 people there a couple of times per week. Drinking is involved, arguments, loud conversations, and the music is unbelievably loud all day and into the night till 2:00 a.m. The tenants share a yard, and in the tenant's own yard she saw him urinate outside. The witness was sitting in her house and saw him exposed.

On June 24th the witness' dog was urinating outside and the tenant's dog was barking, jumping and lunging and tenant went out, grabbed his dog, punched it, threw it and said that if my f...g dog shits in his yard again he will feed the witness' f...g dog to his dog

The witness also testified that on one occasion the tenant sat in his vehicle listening to music that was so loud he couldn't hear the witness knock on the window. When he noticed the witness he turned down the music for about 30 minutes and then turned it up again.

The tenant's behaviour has improved since the notice to end the tenancy was given by the landlord. The witness has not tried to talk to the tenant because from the beginning the tenant's behaviour shows that it would be a confrontation. The witness has heard conversations with the tenant and another guy and didn't feel that anything productive would happen. The witness has lived in the duplex since July, 2010 or 2011 and has had 4 tenants reside on the other side during that time, and has talked to them when the witness has had a concern.

The tenant testified that the witness' dog and her child run in the tenant's yard teasing the tenant's dog, and the witness' dog poops in the tenant's yard. There is no fence separating the 2 yards. One day the tenant saw the witness looking in his back window and the tenant's spouse told her to stay in her own yard. The tenant also asked the witness to keep her dog out of the tenant's yard and 2 days later the tenant's dog was barking while the witness' child was throwing rocks at the tenant's dog and the witness' dog was also running around. The tenant warned the witness that his dog would eat hers.

The tenant also testified that the witness texted the landlord accusing the tenant of urinating in the yard, but the tenant wasn't even in town for that week and the landlord was aware of that.

With respect to vehicle noise, the tenant testified that he was vacuuming his truck with the music going, and the tenant's spouse and son were inside the house and didn't even hear anything, and the tenant denies having a beer in his hand at the time.

With respect to fighting, the tenant testified that a friend was visiting and the tenant's truck was parked out front. A girl from down the street was being chased and both ended up at the rental property. Another neighbour leaned over the fence and told them to quiet down and the fellow yelled at him and the neighbour blamed the tenant. Both the neighbour and the tenant called police who escorted the girl home and took the other fellow to the hospital who was freaking out and threatening to commit suicide. None of that was as a result of anything the tenant did wrong.

The witness has been very unreasonable and has called the fire department 3 times due to the tenant using his portable barbeque. The fire department said that the tenant was cooking meals and there was nothing wrong with that.

The tenant has tried to be friends with the witness, playing catch with her daughter and such, but had to give the child heck for taking a pail to the creek. The tenant was concerned about her being in the creek, so he took the pail and then was accused of being inappropriate to the witness' daughter. The tenant told the witness what had happened and about his concern.

The witness and her friend do not like the tenant, her dog attacks the tenant's dog and eats his food. The tenant took the witness' dog home and said that his dog doesn't go into her yard. The tenant has never done any harm to the witness, her daughter or her dog, and seeks an order cancelling the notice to end the tenancy, testifying that the landlord does not have cause to issue it.

Analysis

The *Residential Tenancy Act* requires a tenant to dispute a 10 Day Notice to End Tenancy for Cause within 10 days of receipt, and the tenant has applied for more time. I have reviewed the material and note that the tenant's original application was filed on August 24, 2015, and then amended it on August 27, 2015. The landlord testified that the tenant was served with the notice on August 12, 2015 by posting it to the door of the rental unit. Documents served in that manner are deemed to have been served 3 days later, or in this case, August 15, 2015. Because the tenant's original application was filed on August 24, 2015, I find that no more time is required and the tenant has filed the application for dispute resolution within the time required under the *Act*.

Where a tenant disputes a notice to end the tenancy given by the landlord the onus is on the landlord to establish that it was issued in accordance with the *Residential*

Tenancy 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 it are in dispute.

In this case, the landlord testified that he's "on the fence" and that the witness has complained about all tenants who reside there except one. I find that the landlord is not satisfied that the tenant is entirely or even partially to blame for any disturbances. The witness has testified to what may be inappropriate behaviour however I also accept the testimony of the tenant that the witness has been warned about her dog and that the witness' dog and child have caused the tenant's dog to get riled up.

I am not satisfied in the circumstances, having heard from the parties and the witness that the landlord has established 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, or that the tenant has engaged in any illegal activity.

The notice to end the tenancy is hereby cancelled and the tenancy continues.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated August 12, 2015 is hereby cancelled 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 30, 2015

Residential Tenancy Branch

