Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUNNYSIDE VILLA SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

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 August 31, 2015 (the "Notice") and to recover the filing fee.

The Tenant, her advocate, M.H., and her friend, O.N., appeared at the hearing (O.N. did not participate in the hearing and was present for moral support for the Tenant). The Landlord was represented by two members of the Board of Directors, V.K. and C.D. 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.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.
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.

Issues to be Decided

1. Should the Notice be cancelled?

2. Is the Tenant entitled to recover the amount he paid to file the application?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which indicated the tenancy began on March 1, 2014. The rental unit is in a low income housing apartment complex.

LANDLORD'S EVIDENCE

V.K. gave evidence on behalf of the Landlord. He confirmed that his knowledge of the tenancy as well as the circumstances giving rise to the issuance of the Notice was minimal. He was unable to testify as to the date the tenancy began or the current monthly rent.

C.D. also provided evidence on behalf of the Landlord but was similarly unfamiliar with the tenancy or circumstances giving rise to the Notice.

V.K. indicated the property managers, J.M. and K.M., were on holidays and not available for the hearing. He did not request an adjournment, nor did he indicate an adjournment had been sought by J.M. or K.M.

J.M. signed the Notice which indicated the reasons for issuing the Notice as follows:

> The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord; and
>
> - the 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.

V.K. stated that it was his understanding that the Tenant was in conflict with several other residents of the rental building, and that the disputes seemed to originate from people parking and/or idling their vehicles outside the activity room door which is also below the Tenant's rental unit balcony. V.K. stated that the nature of the disputes involved words being exchanged, yelling and shouting between the Tenant and other residents.

Introduced in evidence was a document titled "August 30". V.K. was unable to advise who created the document, or the purpose for which it was submitted to the Branch. Accordingly, I find that it is of no evidentiary value.

The Landlord introduced several letters from third parties, dated between August 22 and September 1, 2015, some of which appeared to be residents of the rental building. V.K. was unable to advise whether the individuals who signed the letters drafted the letters as well, or if they simply signed their name to a prepared document. The individuals who signed their names were not in attendance at the hearing to speak to the contents or to be cross examined. Accordingly, I find these letters have little, if any evidentiary value.

Also introduced in evidence were two letters from the property managers, J.M. and K.M to the Tenant dated October 31, 2014 and January 14, 2015 respectively. The Tenant's advocate testified that those letters had not been provided to the Tenant prior to the Landlord submitting evidence in support of the hearing. As the letters were purportedly from the property managers, and to be interpreted as "warning letters", and the property managers were not at the hearing to speak to the contents or whether the letters were in fact sent to the Tenant prior to the hearing, I am unable to find the letters were sent to the Tenant. Accordingly, I find the letters are not admissible.

Introduced in evidence was an email from J.M. to the Tenant's advocate wherein J.M. writes that the Notice was issued as a result of the "August 25, 2015 incident". Neither V.K. nor C.D. could provide any details as to this incident.

V.K. was similarly unable to provide any evidence of service of the Notice. That said, the Tenant made her application for dispute resolution on September 9, 2015 and as such I find she was served with the Notice on or before September 9, 2015.

TENANT'S EVIDENCE

The Tenant's advocate presented her case on the Tenant's behalf and made the following submissions:

- The monthly rent is $344.00 per month.

- The Tenant does not wish to move, likes living in the apartment building and is able to afford the rent.

- The Tenant suffers from anxiety and depression and has asked to be relocated within the rental building so that she is not living above the activity room door outside which residents park and idle their cars.

- The Tenant has requested that the managers enforce the no parking and no idling rule with respect to the area outside the activity room door.

- The Tenant denies any wrongdoing on August 25, 2015 and states that she was simply trying to communicate with others not to park in the area below her balcony.

- All letters provided by the Landlord were dated after the issuance of the Notice, which indicates the Landlord served the Notice and then attempted to "build a case" against the Tenant.

- The Tenant denies the allegations made in the letters purporting to be from the other residents.

- The letters purporting to be from the other residents are handwritten and typed, and appear to be duplicates. It is not possible to know whether the individuals who signed the letters wrote the letters, or simply signed a document that was prepared for them.

- The Tenant never received the October 31, 2014 or January 14, 2015 letters from the managers until she received the Landlord's evidence package in support of the hearing.

- In the communication between the managers and the Tenant's advocate, at no time did the managers indicate they would not be attending the November 9, 2015 hearing.

- The Tenant is appreciative of the manager's recent efforts, namely placing signs which indicate "No Parking" and "No Idling" outside the activity room door, which the Tenant hopes will result in less disruption to her quiet enjoyment of her rental unit. She is also amenable to being relocated within the rental building so that she is not over the activity room door.

Analysis

The Landlord cited the Tenant's conflict with others as being the reason for issuing the notice.

The Landlord's representatives V.K. and C.D. conceded that they had minimal knowledge of the tenancy and the circumstances giving rise to the issuance of the

Notice. The documents submitted by the Landlord were for the most part not admissible as the Landlord could not confirm basic details as to creation of the documents, or in the case of the "warning letters" to the Tenant, whether those letters had been sent.

Two possible versions of events were presented by the parties. The Landlord submitted that the Tenant was causing problems for other residents. The Tenant submitted that she was not at fault, and that she was simply trying to enforce the "No Parking" and "No Idling" rule outside the activity room door, when the managers failed to do so.

Where on party provides a version of events in one way, and the other party provides an equally probably 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. In this case, it is the Landlord who bears the burden of proof.

I find there is insufficient evidence to find on a balance of probabilities that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. Further, although the Notice alleges the Tenant is involved in illegal activity, no evidence of such illegal activity was submitted during the hearing.

For the foregoing reasons, I grant the Tenant's request to cancel the Notice. The tenancy will continue until ended in accordance with the Act. The Tenant, having been successful, shall be entitled to recover of the filing fee and shall be granted a one-time credit of $50.00 towards her next month's rent.

Conclusion

The application is granted and the Notice is set aside. The Tenant is to be credited the filing fee as a one-time $50.00 reduction in her next month's rent.

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: November 10, 2015

Residential Tenancy Branch