



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Melcor Realty Management Services Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; his advocate and an agent for the landlord.

During the hearing the landlord requested an order of possession should the tenant be unsuccessful in his Application for Dispute Resolution.

The tenant had originally requested more time to apply to cancel a 1 Month Notice to End Tenancy that he received on September 30, 2015. The parties confirmed, at the start of the hearing, the dated the tenant received the landlord's Notice. A tenant is allowed 10 days from the day they receive such a notice to file an Application for Dispute Resolution to dispute it.

As the tenant submitted his Application for Dispute Resolution on October 8, 2015 I find the tenant had filed his Application within the required 10 days and he does not require additional time to submit his Application. As such, I amend the tenant's Application for Dispute Resolution to exclude the request for more time to submit his Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

Should the tenant be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the Act.

Background and Evidence

Both parties submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on July 4, 2011 for a tenancy beginning on July 4, 2011 for the monthly rent of \$550.00 due on the 1st of each month with a security deposit of \$275.00 paid; and
- A copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on September 30, 2015 with an effective vacancy date of October 31, 2015 citing 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 seriously jeopardized the health or safety or a lawful right of another occupant or the landlord.

The landlord provided a written summary of issues related to this tenancy. She submitted that the tenant had been asked on many occasions to leave other tenants alone. She states that he has walked into other occupants' apartments without knocking; taken cigarettes and gone through other occupants' cupboards and taken food.

She further states that he would ask other occupants for cigarettes and money and if refused he would become verbally abusive. She states the tenant had been warned several times and that when he is he will change his behaviour for a short period of time but then will start up harassing other occupants again.

In support of her position the landlord has submitted several written complaints from other occupants.

The landlord submitted that the most recent event that precipitated the need for the issuance of the Notice was a verbal complaint she had received from a tenant who later (October 7, 2015) provided a written complaint.

In this complaint the complainant wrote that the tenant had loaned him some money for which the complainant was supposed to pay back by September 23, 2015. The complaint goes on to say that the tenant harassed the complainant for several days wanting payment and that he wanted more back than he had been loaned. The

complainant goes on to say that he called the police after the tenant charged into his apartment and threatened him.

The tenant submits that the complainant was refusing to pay him back the money he owed the tenant. He testified that it was he who called the police and once the police arrived the complainant paid the tenant the loan monies.

Another written complaint, dated November 26, 2015, was submitted by the landlord from another occupant who was a former roommate of the tenant and now lives next door. There is no indication in this complaint when these events occurred.

The complaint explains how the complainant and tenant did not get along during the time when they were roommates and that the complainant then moved from unit 62 to unit 63.

The complaint states that the tenant has been banging on the complainants door at all hours of the day and night; causing loud noises and fighting. He states the tenant has thrown rotten eggs at his car and has notice additional damage to his car.

The parties confirmed that rental units share a common balcony. The tenant submitted that as a result there is a very informal "community" type atmosphere and tenants leave the doors open so that they all come and go between units to visit. The tenant also submits that because of the community balcony it is possible that any number of people could have egged vehicles from the balcony.

A third complaint referring to events in August 2015 states that the complainant was watching television with his door open. He states that the tenant walked into the complainant's unit and took a cigarette without the complainant's permission. He goes on to say that the tenant has done this many times before and that day he did it twice.

The tenant submits that the day of these events was a day that he and the complainant had been drinking together on the shared balcony and the complainant had not said anything to the tenant about not wanting him to take a cigarette throughout the course of this event until the very end when he got upset and told the tenant not to take any more cigarettes.

The landlord submitted letter from a fourth complainant dated December 14, 2014 in which she speaks of events during December 2014. Specifically this complainant submits the tenant is constantly outside her kitchen window looking; that he is verbally abusive to her and her adult children; that he uses her apartment area as a garbage

disposal area (gum wads spat outside her door; cigarette butts and ashes and he takes her cigarette butts; that he causes disturbances on the floor during the night and early morning; and that his cat is constantly outside his door meowing.

The tenant submits that some of the events and issues raised in these complaints could have been any number of people, such as the gum wads and eggs being thrown on to vehicles. The tenant submits this is so because the community balcony is for everyone's use.

The tenant also submits in regard to the complaint that led the landlord to issue the Notice – the attempts to have one of the complainants return a loan is a dispute between the two tenants over a specific issue and was not a result of the tenant's actions but rather of the complainant.

The tenant submits that even if the tenant were responsible for the complaints none of them rise to the level of significant interference that would substantiate an ending of the tenancy and that no one's health or safety had been jeopardized.

During the hearing the landlord offered that should the Notice be upheld and in consideration for the fact that the tenant had paid rent for the month of December 2015 that she would allow the effective date of the Notice to be amended to December 31, 2015.

The tenant requested that should he not be successful in canceling the Notice he be granted an extension of the effective date of the Notice due to the local housing market and the limited ability to find affordable housing.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property or seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

In regard to the event that the landlord testified specifically lead to the issuance of the 1 Month Notice, I find the tenant has provided a plausible account of the events that is different than what the complainant had put forward. In the absence of any other evidence to corroborate her position that the tenant caused this disturbance, I find it is possible that the complainant here had, if not instigated the situation, surely contributed to the event by refusing to pay the tenant was owed.

In addition, I find that this was a dispute between two people who have a relationship that is more than just neighbours in a residential property. This was a disagreement regarding a financial arrangement between the two parties. As such, I find that this incident cannot be considered in the same way as a tenant causing an unreasonably disturbance or significant interference to another occupant; it was in fact a dispute between friends.

Likewise, I find the tenant has provided a plausible explanation in regard to the events in August 2015 and in the absence of any additional or corroborating evidence that the tenant had not been permitted into the complainants unit during the events of that day I find the landlord cannot use this a contributing factor to say the tenant has been unreasonably disturbing or significantly interfering with another occupant or the landlord. Again, I find these events represent a disagreement between friends.

In addition, I place little weight on the submissions of the complainant who had been a former roommate of the tenant. Clearly the tenant's former roommate had difficulty in living with the tenant and there is no way to know, based solely on his written submission, if the complainant provided the complainant as a vestige of their former relationship or it is based on actual disturbing events.

While the tenant had address some of the issues related to the 4th complainant's submissions and that some of the events submitted are in relation to events that occurred off site from the residential property, I find the landlord has established that there are difficulties between the tenant and the female tenant with adult children.

However, I am persuaded by the tenant's submission that these issues do not sufficiently significant to warrant the ending of this tenancy at this time, in part, because some of these events took place almost 1 year ago.

Finally, I find there was no evidence submitted or testimony provided by the landlord that would indicate the tenant has seriously jeopardized the health, safety, or lawful right of another occupant or the landlord.

For these reasons, I find the landlord has failed to establish sufficient grounds to end the tenancy at this time. However, I caution the tenant that continued disturbing and/or escalating interactions with other tenants may be sufficient for the landlord to establish sufficient cause to end the tenancy.

Conclusion

For the reasons noted above, I grant the tenant's Application and cancel the 1 Month Notice to End Tenancy for Cause issued on September 30, 2015. I find the tenancy will remain in full force and effect.

Further, I dismiss the landlord's oral request for an order of possession.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the tenant for this application. I order the tenant may deduct this from a future rent payment pursuant to Section 72(2)(a).

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: December 09, 2015

Residential Tenancy Branch

