



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Torrent Real Estate Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, RP, PSF

Introduction

This hearing was convened to address a claim by the tenant. Both parties participated in the conference call hearing.

The tenant originally applied for an order setting aside a notice to end tenancy and orders compelling the landlord to comply with the Act, perform repairs and provide services. Section 2.3 of the Residential Tenancy Rules of Procedure provides that claims must be related to each other. The section gives arbitrators the discretion to dismiss claims which are unrelated. I determined that the primary matter at issue was whether the tenancy should continue and I advised the parties at the hearing that I dismissed the remaining claims with leave to reapply. The hearing proceeded to address solely the claim for an order setting aside the notice to end the tenancy.

I note that some of the evidence submitted by the landlord dealt with events which occurred after the notice to end tenancy in question was served on the tenant. Although the tenant may have engaged in inappropriate behaviour after the notice was served, and I make no finding on that issue, the only behaviour I considered was that which occurred prior to the service of the notice as later acts could not have formed the basis on which the notice was given.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that the tenancy began in or about October 2011 and that on or about September 22, 2015, the landlord served on the tenant a notice to end tenancy for cause (the "Notice"). The tenant applied for dispute resolution to dispute the Notice on September 28, well within the 10 day timeframe prescribed by the Act.

The Notice alleged that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and that he has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to correct the breach.

The landlord alleged that the tenant has unreasonably disturbed the managers and building staff and prevented them from performing their day-to-day duties. The building manager, TD, testified that the tenant follows him around the building when he is working, including following him across the street, taking photographs of him and accusing him of various infractions, including failing to adequately clean the building and failing to deliver his mail. TD also alleged that on one occasion, the tenant jumped out in front of his vehicle.

The parties agreed that throughout the tenancy, Canada Post delivered to the landlord the mail for all of the residents of the building and the landlord sorted the mail and delivered it to each resident. The tenant came to believe that the landlord was not delivering his mail in a timely fashion and the landlord claimed that on occasion, he confronted the Canada Post worker who delivered the mail. The landlord provided an email from a Canada Post employee who noted that several years before, the tenant had attended at the Canada Post office and was "angry and agitated ... raising his voice, making personal remarks".

Another of the landlord's employees testified that the tenant has screamed at him, demanding his mail and using foul language. Yet another of the landlord's agents testified that his staff has regularly complained that the tenant has threatened legal action and criminal charges against the landlord and their staff members. On one occasion, the tenant told a staff member, "I know where you live, you can't hide."

The landlords entered into evidence a number of letters authored by the tenant and delivered to various staff members. The letters contain complaints about issues such as lack of maintenance in the building, changes to cable television service, inconsistent mail delivery and lack of onsite security personnel. The landlord claimed that these letters were overly confrontational and objected to the tenant's repeated threats to litigate, press criminal charges and talk to the media. The letters show that the tenant has demanded that the landlord provide him with copies of security videotape which the tenant claimed was evidence.

The landlord was also distressed by the tenant having enlarged a letter from the landlord to the tenant in which the landlord advised that they would not be delivering mail daily and holding this letter as a sign outside the building. The landlord claimed that the tenant accosted people who were entering and leaving the building.

The tenant denied having disturbed or interfered with the landlord. He claimed that the landlord has withdrawn a number of services over the years and has simply attempted to force the landlord to comply with their legal obligation to provide those services and maintain the building. The tenant denied having jumped out in front of TD's vehicle and claimed that he did not follow him around the building. He claimed that if he saw TD outside the building it was not because he was stalking him but because the tenant frequently walks around his neighbourhood and occasionally encounters other people from the building.

The tenant did not deny swearing at the landlord's employees, but he claimed that TD had set the tone as to what kind of language should be used and that TD had frequently used foul language toward the tenant. The tenant denied having threatened anyone at any time.

The tenant claimed that he wrote the landlord numerous letters because the landlord had asked him to put his concerns in writing. The tenant acknowledged that he enlarged one letter and held it up as a sign outside the building for passersby to see, but he claimed that he did not engage anyone in conversation unless the discussion was initiated by the other party.

Analysis

In order to end a tenancy for the reason that the tenant has breached a material term of the tenancy agreement, the landlord is required to give the tenant a written notice that he has breached a material term, identifying what that material term is, and giving him an opportunity to rectify the breach. In this case, the landlord has not provided evidence showing that they gave the tenant written notice that he had breached a material term. I therefore find that the Notice cannot be effective to end the tenancy on the basis of the tenant having breached a material term of the tenancy agreement.

With respect to the remaining allegations, the landlord must prove that the tenant has *significantly* interfered with and *unreasonably* disturbed the landlord or other occupants. There is no question in my mind that the tenant has interfered with and disturbed the landlord, but I am not satisfied that the impact of his actions can be characterized as significant or unreasonable. I accept that the tenant has sworn at the landlord's employees as this was not disputed by the tenant. TD denied having used foul language with any of the tenants but the landlord acknowledged that a previous employee, who has since been dismissed from the landlord's employee, had behaved unprofessionally and had possibly used inappropriate language with tenants. The tenant should intuitively know that swearing at anyone is not part of acceptable, civil discourse. However, as this appears to have been reciprocated by the landlord's

previous employee, I am unable to find that this behaviour, while inappropriate, is significant or unreasonable.

The landlord spoke about the tenant threatening staff members, but the only specific threats which appear to have been made are not toward the personal safety of the staff members, but threats of litigation and media attention. Tenants who feel aggrieved and advise others that they may resort to legal means to address their perceived mistreatment are not, in my opinion, uttering threats which should end their tenancy. Rather, this seems to me to be a reasonable response, although in this case it was not particularly effective.

The fact that the tenant has written numerous letters of complaint does not in my view give the landlord grounds to end his tenancy. Although the landlord may not agree that the issues raised by the tenant are legitimate and may be annoyed by the volume of the complaints, I am unable to find that the complaints can be said to be a significant interference or unreasonable disturbance.

I am not persuaded that the tenant has continually followed TD around the property or off the property. I have no doubt that the tenant has approached TD to voice complaints and may have followed him in order to ensure that TD listened to his entire complaint, but there is insufficient evidence before me to prove that the tenant prevented TD from performing his duties at the property.

Ordinarily I would have found that the tenant's actions toward the Canada Post employees were inappropriate, but the incident at the Canada Post offices took place several years ago and a more recent incident in the building occurred after the Notice was served and therefore cannot form part of the grounds to support this Notice.

I find that the landlord has failed to prove that the tenant has significantly interfered with or unreasonably disturbed the landlord and I therefore find that the landlord has failed to meet their burden of proof. I order that the Notice be set aside and of no force or effect. As a result, the tenancy will continue.

Although the tenancy has been preserved, both parties are reminded that foul language is not appropriately used in either verbal or written communications and the tenant in particular is reminded that further use of foul or abusive language does not have to be tolerated by the landlord and could form grounds to end his tenancy in the future. Further, the landlord was unable to prove that the tenant followed TD or other staff members to the point where they were unable to perform their duties. If the tenant continues to follow staff members or prevent them from carrying out their required activities, the landlord is free to issue another notice to end tenancy and should be

prepared with evidence and witnesses to confirm this interference. The tenant would be well advised to ensure that his interactions with staff members are limited to reasonable amounts of time sufficient to allow him to explain any issues he wishes to bring to their attention.

Conclusion

The Notice is set aside.

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 07, 2015

Residential Tenancy Branch

