Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CORNERSTONE PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC, O

Preliminary matters

This matter was previously heard on August 28, 2015 and was dismissed as the Arbitrator found no grounds to extend more time to make the application which resulted in the application being dismissed due to late filing of the application. The Tenant then made a review consideration application on September 15, 2015 and the review application was dismissed because the Arbitrator found no evidence to support the Tenant's application for more time to make the application.

The Tenant then applied for a Judicial Review and was successful in having a new hearing scheduled. The Justice indicated there was procedural unfairness and it was unreasonable to dismiss the Tenants' application due to late filing when the Tenants tried to comply with the Act.

Both Parties objected to new evidence sent for this hearing. The Tenants' Advocate said the Landlord's evidence were incidents that happened after the Notice to End Tenancy was issued; therefore they are inadmissible. The Landlord said the Tenants' evidence was submitted late so it is inadmissible as well.

The Arbitrator said that the Justice ordered a new hearing so that the matter could be heard properly and on the merits of the situation. Consequently the Arbitrator accepted all the evidence to the hearing and said he would use what was relevant to the application.

The Tenants' application for more time has been satisfied by the decision of the Judicial Review granting the Tenants a new hearing.

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for Cause, for more time to make the application and for other considerations.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on or about July 3, 2015. The Landlord said they received the Tenants' hearing package. Based on the evidence of the Tenant and Landlord, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Are the Tenants entitled to an Order to cancel the Notice to End Tenancy?
2. What other considerations are there?

Background and Evidence

This tenancy started on March 1, 2006 as a month to month tenancy. Rent is $811.66 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of $325.00 on February 19, 2006.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated June 18, 2015 by personal delivery on June 18, 2015. The Effective Vacancy Date on the Notice is July 20, 2015 which under section 53 automatically changes to the correct date of July 31, 2015. The Landlord said the Tenants are living in the unit and the Landlord said he wants to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenants have significantly interfered with or unreasonably disturbed other occupants or the landlord, the Tenants have seriously jeopardized the health and safety or lawful rights of other occupants or the landlord, the Tenants have engaged in illegal activity that is likely to damage the Landlord's property, as well the Tenants' illegal activity has adversely affected the quiet enjoyment, security, safety or physical well- being of occupants or the landlord and the Landlord said the Tenants have breach a material term of the tenancy agreement.

The Landlord said there were a number of incidents that lead to the issuing of the 1 Month Notice to End Tenancy for Cause and they are as follows:

1). The Landlord said the Tenant has had behaviour around his staff and other tenants that is unacceptable. The Landlord brought in a Witness H.P. who said the Tenant was very agitated in encounters she had with the Tenant on March 16 and 17, 2016. The Witness H.P. said the Tenant was loud and aggressive but did not verbally threaten her or physically threaten or touch her. The Witness

H.P. said the Tenant was just loud and acted disturbed about a package the Tenant wanted the Witness to give the Landlord.

2). The Landlord said the Tenant built steps to the waterfront on the Landlord's property and the Tenant did this without authorization. The Landlord said this damaged the Landlord's property. On questioning the Landlord said the steps have been removed.

3). The Landlord said the Tenants have been accessing the waterfront on the Landlord's property and the female Tenant injured herself climbing down to the water front. Following his accident the Landlord made inquiries to his insurance company about the Landlord's liability for his property going to the waterfront. The Landlord said the insurance company told him he may be responsible for any accidents and the Landlord should put up a fence to stop access to the water front. The Landlord said he did this in 2010 or 2011and he put up "no access to water" signs. The Landlord said the Tenants have continued to get access to the waterfront by climbing over the fence. The Landlord continued to say they issued a letter in June, 2015 and in March, 2016 telling the Tenant not to gain access to the water by going past the fence. The Landlord said the Tenants ignored the letters and continued to access the water on the Landlord's property. The Landlord said this is a material breach of the tenancy agreement because clause 24 in the tenancy agreement said that tenants must conform to notices, rules, and regulations posted about common areas. The Landlord said the fence is part of the common area of the rental complex.

4). The Landlord said the Tenant has stored gasoline on the property. The Landlord continued to say this is a hazardous item and clause 20 of the tenancy agreement does not allow the storage of hazardous items in the rental complex.

5). The Landlord said the Tenant has two dinghies stored on the property and the dinghies are not authorized to be stored on the property. The Landlord submitted three letters dated July and September, 2014 requesting the Tenant to remove the dinghies and a letter dated September 24, 2014 offering the Tenant to store the dinghies on the property for $15.00 per month. The Tenant declined the Landlord's offer say the dinghies were on public land. The Landlord said the dinghies are still on the Landlord's property.

6). Further the Landlord said the Tenants have added plywood to the dock at the waterfront. The Landlord said the dock is the Landlord's and the Tenant did this without authorization from the Landlord.

7). The Landlord continued to say the Tenant has brought his bike into the common area of the rental complex and spoiled the carpet and flooring. The Landlord said the Tenant has broken the tenancy rules by doing this and it is unacceptable behaviour.

The Landlord said they have been dealing with many issues with the Tenants and have issued numerous warning letters to the Tenants with regard to the above incidents. The Landlord submitted 10 warning letters in the evidence package dated September 1, 2013 to June 3, 2015.The Landlord said the Tenants have not complied with the Landlord's requests and now the Landlord wants to end the tenancy for the reasons given above.

The Tenant said he disagrees with the Landlord's claims. The Tenant continued to say some of the claims are wrong and some have been corrected when the Tenant was told to correct them. The Tenant and his Advocate responded to the Landlords reasons as follows:

1). The Tenant said he was agitated during the encounter with the Witness H.P. but he did not threaten her verbally or physically. The Tenant said he was upset about the Notice to End Tenancy and he believes he is being bullied by the Landlord. The Tenant continued to say there are no complaints from other tenants and the only complaints are from the owner J.W. who also lives in the building.

2). The Tenant said he built the steps down to the water front to make access safer as he had unrestricted access to the waterfront for the first six years of his tenancy. The Tenant said the steps are gone now so they should not be an issue.

3). The Tenant said they moved into the rental unit partial because it had water access so they could use their boat. The previous manger of the building agreed that the Tenants could access the waterfront from the Landlord's property and the Tenants could store their dinghies on the waterfront or on the Landlord's property. The Tenant said they had unfettered access to the water front for the first 6 years of the tenancy. The Tenant said water access was part of the tenancy agreement although it was not written into the agreement. The Tenant said the Landlord cannot just change the rules and then evict someone if they don't comply with the new rules. Further the Tenant said water access is not a material term of the tenancy and they have stopped accessing the waterfront through the Landlord's property.

4). The Tenant said they have not stored gas in their rental unit. The Tenant continued to say they did store a new gas tank and new engine in their storage area but there was no fuel in the tank or in the engine. The Tenant said the fire department was at the rental complex and the firemen confirmed there was no gasoline in either the tank or engine and the items were not a hazard. The Tenant said they have carried gas through the yard on occasion but they typically gas up the boat on the water at service centers.

5). The Tenant said the dinghies are stored on the waterfront and they may be on crown land or the Landlord's land. The Tenant said he believes he was given permission by the previous manger to store the dinghies on the property or waterfront.

6). The Tenant said he disputes the dock is on the rental property because it is on the waterfront which is crown land therefore it is not part of the tenancy agreement and not part of this hearing.

7). The Tenant said he did bring his bike into the common area of the rental property which is not a violation of the rules as tenants are to store their bikes in their unit (clause e of the rules). The Tenant said he cleaned the carpet that he made dirty with his bike.

The Tenant continued to say that in a previous decision an Arbitrator ruled that the fence issue and water access was not a material term of the tenancy; therefore the Landlord has no grounds to say the Tenant has breached a material term of the tenancy by gaining access to the waterfront over the fence. The Tenant said that water access was important to him when they rented the unit.

The Tenants counsel said that interpreting clause 24 of the tenancy agreement "must conform to all notices, rules, and/or regulations posted on or about the residential property concerning the use of common area" to include the fence and no water access signs would be stretching the meaning of the clause. The Advocate said the Tenants climbing over the fence is not a material breach of the tenancy agreement because water access is not a material term of the tenancy agreement.

The Landlord said he does not consider water access a material term of the tenancy but he does believe the Tenant climbing over the fence to get to the water puts the Landlord at risk for a liability claim if someone gets hurt. The Landlord said they have tried to work with the Tenant as seen by the warning letters but the Tenant has not cooperated. The Landlord said he wants to end the tenancy as soon as possible.

The parties were offered the opportunity to explore a settlement agreement to resolve this dispute. The Landlord declined the offer and requested a decision on the dispute.

The Landlord said he had no closing remarks and his evidence speaks for itself.

The Tenant said in closing that when they received the letter from the Landlord in March, 2016 telling them to stop gaining access to the water front by climbing over the fence they have stopped gaining access through the Landlord's property. The Tenant said they are going to the waterfront now on the Hydro right of way. The Tenant said they want to continue the tenancy until they can find a new rental unit that they can afford. The Tenant said they will comply with all the Landlord's requests in the future.

The Advocate said in closing that he is not acting for the Tenant anymore because the Tenant did not comply to their working agreement, but he believes the Tenant has not breached a material term of the tenancy agreement because the Landlord has not proven the water access issue is a material term of the tenancy agreement.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenants and the Landlord and the Owner. The Landlord said they have tried to work with the Tenants but the Tenants have not cooperated. The Tenant said they believe they had water access authorization from the previous manager and it is not a material term of the tenancy. Consequently the parties will abide by the following decision. In Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant or the landlord has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **significantly** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at **significant** risk.

I find the encounter between the Tenant and the Witness H.P. did not reach the level of unreasonableness that would warrant an end of tenancy. Witness H.P. said the Tenant was aggressive but did not threaten her. The Witness said the Tenant was just loud and agitated.

Further I accept the Tenant's affirmed testimony that he cleaned the carpet after soiling the carpet by transporting his bike to his unit. This incident does not reach the level of significant to warrant an end to tenancy.

The reason of damaging the Landlord's property illegally by building steps to the water front has been repaired and again does not meet the test for seriousness to warrant an end to tenancy.

Further I find the Landlord has not established grounds to prove the Tenants were storing gasoline in the rental unit and this presented a hazard to the rental complex. There are letters in the evidence indicating the Tenant were seen carrying gas tanks but there is no corroborative evidence proving the Tenants were storing gasoline in the rental unit. As well the Tenants gave affirmed testimony the tank and engine they stored in the storage area were new and empty of fuel. As well the Tenant said the tank and engine were checked by the fire department and cleared as safe. I find the Landlord has not established grounds to end the tenancy for storing gasoline in the rental unit.

With regard to the two dinghies stored on the Landlord's property; I accept the Landlords affirmed testimony that the dinghies are stored on his property. The Landlord made no reference to the dinghies being a hazard; therefore I find the storage of the dinghies on the property is not serious enough to establish grounds to end a tenancy. I

further order the Tenants to remove the dinghies from the Landlord's property by May 15, 2016 or to make arrangement with the Landlord to pay for the storage space. As the Landlord offered a storage price of $15.00 per month, I recommend this amount as the storage price for the two dinghies if the tenancy continues.

Further the issue of the plywood on the dock may be outside the tenancy agreement therefore; I refuse jurisdiction as I am unclear if the dock is on the Landlord's property or crown property as it is located on the water and the waterfront. I have no jurisdiction with things outside of the tenancy agreement and I find the dock is outside the tenancy agreement.

In this case it is my finding that these reasons given for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47(d) of the Residential Tenancy Act.

Further in section 47 (e) the Landlord must show the Tenants have **engaged in illegal activity** that has or is likely to damage the property or adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

I find the Landlord has not established grounds to prove the Tenants have engaged in illegal activities that had put the Landlord's property at risk or has adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

With regard to the Landlord's reason that the Tenants have breached a material term of the tenancy by accessing the waterfront over the fence. I questioned the Landlord if he believed that water access was a material term of the tenancy and he said it was not so I believe the Landlord is relying on clause 24 of the tenancy agreement which is about the use of common areas and tenants must conform to notices, rules and regulations posted. I accept the Tenants have disregarded the fence and signs saying "no water front access" and this **may** be considered a material breach of the tenancy agreement under section 24 of the tenancy agreement. The Tenants actions could have put the Landlord at a liability risk. The second part of this reason to end a tenancy for a breach is "Breach of a material term of the **tenancy agreement that was not corrected within a reasonable time after written notice to do so"**. I find the Landlord's letter of June 3, 2015 does not mention climbing the fence and the "going past the fence to the beach or you will be evicted" is unclear what the Landlord is requesting the Tenant to do. Consequently the Notice to End Tenancy dated June 18, 2015 may have no written notice to correct the breach of tenancy agreement or the written notice is unclear. It is a Landlord's obligation to be clear when requesting a correction of a breach of a material term of a tenancy agreement. I find the Landlord has not established ground to prove a material term of the tenancy agreement was breached and the written notice to correct the breach is unclear.

Further and unrelated to Notice of June 18, 2015 the Tenant said the March, 2016 letter to correct the breach is clear and the Tenants are not gaining access to the beach through the Landlord's property since receiving the March, 2016 letter. If this is the case then the Tenant has corrected the breach in a reasonable time period.

In conclusion, I find the Landlord has not established grounds with corroborative evidence to prove the reasons on the 1 Month Notice to End Tenancy for Cause dated June 18, 2015. I order the Notice to End Tenancy is canceled and I order the tenancy to continue as stated in the tenancy agreement dated February 14, 2006.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated June 18, 2015 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

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: April 20, 2016

Residential Tenancy Branch