



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rockwell Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC, MNDC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking more time than prescribed to dispute a notice to end the tenancy; for an order cancelling a notice to end the tenancy for cause; and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant attended the hearing with legal counsel, gave affirmed testimony and provided evidentiary material in advance of the hearing. An agent for the landlord company also attended, gave affirmed testimony and called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and give closing submissions.

During the course of the hearing, counsel for the tenant advised that evidentiary material had been sent via facsimile to the Residential Tenancy Branch the day before the scheduled hearing date, and a copy provided to the landlord, but I had not received the material prior to the commencement of the hearing. The landlord's agent did not oppose inclusion of that evidence. That evidence has now been received, and all evidence has been reviewed and is considered in this Decision.

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 was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for reimbursement of hydro costs?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on March 1, 2008 and the tenant still resides in the rental unit. Rent in the amount of \$545.00 per month is currently payable under the tenancy agreement 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 \$262.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 97 units in 2 buildings and the landlord's agent resides in the opposite building from the tenant.

The landlord's agent further testified that on March 10, 2016 she posted to the door of the tenant's rental unit a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided. It is dated March 10, 2016 and contains an effective date of vacancy of April 30, 2016. The reasons for issuing the notice state:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - put the landlord's property at significant risk (beside which someone has written, "refused to let maintenance in for bathroom problem");
- 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 (underneath which someone has written, "offensive language – name-calling").

The landlord's agent further testified that about 6:00 p.m. on March 9, 2016 the tenant attended the apartment of the landlord's agent demanding that a plumber be called. The process for the complex is to have the maintenance fellow assess the situation prior to calling a plumber. The tenant had returned to his rental unit and the maintenance fellow attended. The tenant was screaming, yelling, name-calling and abusive to the maintenance fellow, and the tenant slammed the door in his face. The tenant again attended the residence of the landlord's agent and put his hand up to her face to stop her from speaking and told her that he had asked for a plumber, not the maintenance fellow. There was a lot of yelling, and the tenant hurled some abusive language at the landlord's agent, causing her to become rattled.

There had been previous incidents, and it seems about every 6 months it happens. The employer of the landlord's agent told her that was grounds to evict, and the landlord's

agent believes that the verbal abuse and by putting his hand in her face, constitutes an assault and illegal activity.

The landlord's agent also testified that she had spoken with the tenant's counsel earlier this week and had agreed to cancel the notice to end the tenancy. The tenant has not been in contact with the landlord's agent from August, 2015 to March, 2016, and there have been no incidents this year.

The tenant has been paying hydro, which is supposed to be included in the rent. The parties had also agreed to deal with that as a separate matter from the notice to end the tenancy.

The landlord's witness testified that he is the maintenance fellow for the rental complex, and on March 9, 2016 he knocked on the tenant's door and the tenant opened it and then slammed it. The witness went to walk away and the tenant opened the door again and became more and more verbal. This is the 3rd or 4th time the tenant has "gone off" on the witness. The tenant has told the witness that he has no right to attend the rental unit and that the witness didn't know what he was doing. The witness has not been to the rental unit since. The witness has never refused to do any repairs to the rental unit; the tenant just slams the door, which has been going on for 5 or 6 years.

The witness also resides in the rental complex that the tenant resides in. The witness has had occasions to deal with fights and arguments in the complex, not involving this tenant, but often does so from his balcony by yelling to control situations, but does not yell obscenities.

The tenant testified that he has resided in the rental unit for 8 years, and the maintenance fellow has been asked to fix things on numerous occasions. At the beginning of the tenancy, the landlord's witness attended the rental unit to repair a leak in the toilet then left the door open saying he'd be right back but didn't return for 6 months. He ruined a towel belonging to the tenant, and has been incompetent. He yells off the balcony regularly including making sexist remarks, and the tenant's rental unit is right below. The tenant does not want him to attend the rental unit.

On March 9, 2016 the maintenance fellow was yelling at the tenant which is why the tenant opened the door. The landlord's agent does nothing about his behaviour and has been told not to send him to the tenant's rental unit.

The tenant has also provided a sworn Affidavit.

Submissions of Legal Counsel for the tenant:

The parties had settled this dispute yesterday, wherein the landlord's agent agreed to cancel the notice to end the tenancy. Counsel faxed all correspondence to the Residential Tenancy Branch yesterday showing that the landlord's agent confirmed the agreement, along with a copy of the tenancy agreement which counsel received from the landlord yesterday. The landlord is now in breach of that agreement. The agreement also included a provision that the tenant would apologize in writing, and was told that was enough to settle the issues, and the tenant has done so. The tenant has also agreed to allow the maintenance fellow to complete repairs in the rental unit when required. Counsel submits that the agreement should be enforced.

Counsel also submits that the tenant has mental health issues and has sought assistance from Advocates, and saw Counsel on March 17, 2016; 7 days after service of the notice to end the tenancy. The tenant was unable to pay the filing fee and required paperwork to apply to have it waived, which took time. Advocates in the community have failed the tenant by not following up with the hydro issue, mailbox problems and disputing the notice to end the tenancy within the time prescribed. Consequently, the tenant filed the application disputing the notice on March 31, 2016 and seeks additional time to dispute the notice.

With respect to the reasons for issuing the notice, Counsel submits that management of the rental complex was aware that the maintenance fellow and the tenant don't see eye to eye on repairs, which is why the tenant wanted a plumber. The language used by the tenant on March 9, 2016 is not enough for eviction.

Counsel also submits that there is no evidence of illegal activity.

Submissions of the landlord's agent:

The landlord's agent submits that things will escalate again in the future. History shows that things will be good for awhile, and then back to square one.

Hydro is included in the rent and the parties have agreed that it is a separate issue from this dispute, and the parties can work it out.

Analysis

I have reviewed the evidentiary material of the tenant, and dealing with the hydro issue firstly, I leave it to the parties to deal with. The landlord's agent agrees that hydro is included in the rent. The tenant, in order to be compensated, must provide the amounts for each bill that the tenant paid. If the parties cannot arrive at a mutually agreeable settlement, the tenant will be at liberty to reapply for monetary compensation.

Counsel for the tenant submits that the settlement agreement made between the parties should be enforced. Parties are free to settle any dispute right up to the steps of the courthouse, so to speak, and there is a certain ethical professionalism expected between counsel for parties. Since the landlord is not represented by counsel, I don't expect that the same ethical professionalism can be enforced.

However, I do find that the emails provided by the tenant's counsel with respect to the settlement discussions are relevant to the tenant's application seeking more time to dispute the notice to end the tenancy. Aside from counsel's submission that advocates for the tenant failed him with a number of omissions, it is clear that the parties were in discussions, and I find that the application for more time to dispute the notice is justified.

Where a tenant disputes a notice to end a tenancy given by a 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 1 Month Notice to End Tenancy for Cause dated March 10, 2016, and I find that it is in the approved form. I also note that the landlord's agents have written beside the reasons for issuing the notice, which is not sanctioned by the *Act*, but I don't find fatal. However, the reasons for issuing it are in dispute.

I am not satisfied, with or without considering the handwriting on the notice that the tenant has engaged in any illegal activity. I do not accept that putting his hand up to attempt to stop someone from talking is an assault. I am satisfied, however, that the maintenance fellow and the tenant do not like each other, and both are guilty of annoying each other, and I do not see that as illegal activity.

I am not satisfied that the landlord has established that the tenant has put the landlord's property at significant risk. The tenant's Affidavit states that there was no risk to property when he asked for a plumber and that he fixed the toilet himself. The landlord's agent did not dispute that or question it, and I find no other evidence that the tenant has put the landlord's property at significant risk at any time.

With respect to the final reason for issuing the notice to end the tenancy, "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord," the landlord's agent testified that there is a history, but did not elaborate on any. The only evidence before me of a disturbance is 2 versions of the tenant verbally accosting the maintenance fellow. I am not satisfied that due to the unhealthy relationship between the tenant and the maintenance fellow 2 descriptions of one incident are sufficient to end the tenancy.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated March 10, 2016 is hereby cancelled and the tenancy continues.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, specifically reimbursement of hydro costs is hereby dismissed with leave to reapply.

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: May 10, 2016

Residential Tenancy Branch