Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MEADOWLAND FARMS
DECISION

Dispute codes CNC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 1 Month Notice to End Tenancy For Cause, pursuant to section 47
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The tenant's application was filed within the time period required under the Act.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all of the documentary evidence and the testimony of the parties, only the relevant details of their respective submissions and arguments are reproduced here.

The tenancy began on September 1, 2010 with a monthly rent of $700.00 payable on the 1st day of each month. The tenant paid a security deposit of $350.00 at the start of the tenancy. The property the tenant resides at is farmland that also includes another residence occupied by other tenants D.G and his partner L.G. The two residences are

on the same property but separated by one another by a large barn and are not visible to each other. The property also neighbors and shares a driveway with a golf course. The neighboring tenants D.G. and L.G. are also employees of the golf course.

The landlord served the tenant with the 1 Month Notice on March 28, 2016 with an effective date of April 30, 2016. The landlord argues the 1 Month Notice should be upheld on the grounds that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord and that the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The landlord submits that on March 19, 2016, the tenant and his girlfriend D.L. were involved in a domestic dispute on the property outside of their residence, which was witnessed by others including D.G. and L.G. D.G. and L.G. intervened in the altercation by letting the tenant know that they were calling the police. Later that evening the tenant responded by leaving 8 voicemail messages within a 90-minute time frame for D.G and L.G's employer, the golf course, in an attempt to get them fired from their jobs. The landlord provided a recording of these voicemails as evidence. In these voicemails, the tenant is filing a complaint with the golf course in regards to D.G. and L.G. operating golf course equipment, specifically a golf cart, outside of the golf course property. The tenant is heard complaining that he was almost killed by L.G. and requests something be done before someone gets killed. The landlord also submitted a witness letter from D.G and L.G. stating that they no longer feel safe living next to the tenant due to his bullying behavior and constant threats. They state in the letter that in the past the tenant has intimidated and verbally threatened their friends and coworkers. They make reference to a voicemail message left by the tenant at their workplace in which he threatens to kill a specific employee.

The landlord also provided a recording of two previous voicemails left by the tenant for I.W., the golf course Superintendent. It is not clear when these voicemails were left but the tenant can be heard threatening to kill some other employee of the golf course. The landlord provided a witness letter from I.W. in which I.W. states that the golf course has had numerous harassment incidents with the tenant. I.W. states that the tenant's complaints and threats stem from the speed at which people drive past his house down the driveway and general noise around his residence from the road and golf course property. I.W. states that he has investigated each incident and in each case found no wrongdoing by employees of the golf course.

The landlord also provided a witness letter from C.H., the Operations Manager of the farm property. In the letter, C.H. writes that as a property manager he has had to visit the tenant's residence on numerous occasions for minor maintenance repairs and on

each occasion the tenant's behavior has been aggressive and unacceptable. C.H. writes that the tenant's behavior is also violent and abusive towards trades' people who have been required to be present on site for repairs. The landlord submits that BC Hydro has the property flagged as a "difficult property" as the tenant has been rude and belligerent to their meter readers over the past 5.5 years. The landlord also submitted a statement from M.R., the Farm Manager, in which M.R. states that in 2013 he had received a call from an employee of Corix Waterworks who was on the property to install new water meters for the City. As per this written statement, the Corix employee had called M.R. to report that he had been threatened with a pick axe for being on the property. When M.R. arrived at the property he witnessed the tenant sitting on his front porch with a pick axe and the Corix employee was sitting in his truck and only started to install the meter once M.R. arrived.

The landlord submits that the latest incident of March 19th was the last straw as the tenant had been given many chances over the years to change his behavior.

The tenant argues that the 1 Month Notice should be cancelled on the grounds that he does not have a history of issues or complaints as reported by the landlord. S.M. the tenant's employer appeared as an advocate on behalf of the tenant. S.M. argued the incidents referred to by the employer, specifically attacking a contractor with a pick axe, is out of character for the tenant. S.M. argued on behalf of the tenant that the landlord did not have any written process in place in how they dealt with issues with tenants and that the landlord didn't provide any evidence that they ever spoke to the tenant in regards to the alleged issues. The tenant testified that he had never been spoken to or given any warnings over the years with respect to his behaviour and the incidents as alleged by the landlord did not occur.

The tenant acknowledged making calls to the golf course on March 19th in an attempt to get D.G and L.G. in trouble with their employer but states he did so out of frustration. The tenant argues that he did not threaten to kill D.G. or L.G. in these voicemails as alleged by the landlord, rather he was simply stating that someone was going to get killed by the manner in which L.G. was driving the golf cart.

The tenant's girlfriend D.L. appeared as a witness on behalf of the tenant and testified that the incident of March 19th was completely her fault and that the neighbours had assumed that the tenant was the instigator when it was in fact her that instigated the altercation.

The tenant's friend S.L. testified on his behalf that he was present on the property on the day of the altercation and it was the tenant's girlfriend D.L. who instigated the altercation.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

In this case, the landlord issued a 1 Month Notice for the following reasons that fall under section 47 of the Act:

- the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, and
- the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

With respect to the latter of the above two grounds, I find that landlord has provided insufficient evidence that the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The voicemail evidence submitted by the landlord does not substantiate any grounds for a finding that the landlord had cause on this ground. It is evident from the March 19th voicemails left for the golf course that the tenant is not directly threatening the other tenants D.G. or L.G. Rather the tenant appears to be stating that someone is going to get killed by the tenant L.G. if something is not done about the manner in which she was supposedly driving the golf cart. In the two voicemails left for I.W., the golf course superintendent, it is evident that the tenant is threatening to kill someone. It is not clear whom the tenant threatens but it appears to be a golf course employee other than the tenant D.G. and L.G. As the tenant's threat was not directed at another occupant or the landlord, I find the landlord has not met the onus of proof on this ground.

However, based on the evidence above, I find the landlord has proven on a balance of probabilities that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord. The tenant acknowledged leaving voicemails for the golf course in an attempt to get D.G. and L.G. into trouble with their employer. The tenant left 8 voicemails over a 90 minute time period and acknowledged it was due to

frustration following an altercation he had with his girlfriend. By doing so, I find the tenant unreasonably disturbed and significantly interfered with another occupant. Further, I find that the threatening voicemail left in respect to some other golf course employee is also significant interference with the landlord's business. The landlord's farm operation is neighboring the golf course and the actions of the tenant in threatening employees of the golf course affect the reputation of the landlord.

I also accept the landlord's evidence with respect to the incidents involving various trades' persons who came on the property. Although much of the landlord's evidence in this regard was submitted by way of written statements, which could not be questioned by the tenant in any meaningful way, I find the witness statements to be a credible reflection of the events and find that on a balance of probabilities these incidents did occur as alleged by the landlord. I make this finding as the evidence presented by the landlord, specifically the voicemails left by the tenant in which he complains about his neighboring tenants and also threatens a golf course employee; lead me to believe that it is more likely than not that similar incidents occurred with other persons present on the property. Accordingly, I find the tenant has significantly interfered with the landlord by restricting or interfering with various trades' persons authorized by the landlord to be on the property. Further, the tenant's main argument was that over the years he was not given any warnings or spoken to in regards to his conduct. There is no requirement under the Act for a landlord to provide warnings or an opportunity for a tenant to correct his or her behavior. The landlord may issue a Notice to End Tenancy for cause after only one provable incident. In the case at hand, I find the landlord has met this onus.

I find that the landlord has provided sufficient evidence to justify that it had cause to issue the 1 Month Notice. The tenant's application is dismissed without leave to reapply and the landlord is entitled to an Order of Possession.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the $100.00 filing fee paid for this application from the landlord.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 11, 2016

Residential Tenancy Branch