



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Five Corner Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant for an order setting aside a 1 Month Notice to End Tenancy for Cause. Both parties appeared and gave affirmed evidence. No issues regarding the exchange of written evidence were identified.

Issue(s) to be Decided

Is the 1 Month Notice to End Tenancy for Cause dated May 31, 2016 valid?

Background and Evidence

This tenancy commenced July 15, 2014, as a one year fixed term tenancy and has continued as a month-to-month tenancy since the expiry of the term. The monthly rent of \$750.00 is due on the first day of the month. The tenant paid a security deposit of \$375.00.

The rental unit is an apartment located on the ground level of a house. The upper level of the house is the only other rental unit in the building.

The landlord also owns a commercial building located on the same property. It's commercial tenants are a very well established realty company, a veterinarian's office, and two medical clinics. The commercial building and the rental unit abut the same parking lot. The tenant's access to the rental unit is across the parking lot and through a gate to a private fenced-in area. Not only do the employees of the various business units use the parking lot but the clients of some of the businesses, the veterinarian's in particular, must go by the tenant's unit to access the business.

Earlier in the tenancy the upstairs tenants complained frequently about the volume of the music coming from the tenant's unit. With the intervention of the tenant's father, the problem was resolved.

The owner of the landlord company testified that he was at a social event towards the end of May when someone he knew spoke to him about the tenant living in the ground level residential unit. This individual told him that the tenant had been involved in an altercation with a male realtor employed by the landlord's commercial tenant.

After this conversation the landlord went to speak to his commercial tenants.

At the real estate office he was told that several of the female real estate agents had complained about the tenant following them to their cars and making them feel unsafe. The witness was also told about an incident between the tenant and a male real estate agent that started with the tenant being aggressive and "in the agent's face" and ending with the agent punching the tenant hard enough that he was knocked to the ground.

The landlord was very reluctant to give specific information about the conversation at the social event or about this incident because of fear of retaliation from the tenant. In the course of his testimony the landlord made reference to the tenant having been involved in a murder trial in the past.

The landlord then went to the veterinarian's office. They told the landlord that their clients had reported having unpleasant encounters with the tenant in the parking lot. T

The property manager also testified about conversations he had with tenants after the concern was brought to their attention. He said that the staff at the veterinarian clinic expressed concern about the language used by the tenant. For example, the tenant was said to have told one of the staff, about two weeks before the alleged incident in the parking lot, that "if you ever need someone killed I'm your man". The veterinarian told the property manager that the tenant told him that his mother worked for the AG and if he ever needed anything fixed outside the law he could arrange it.

The property manager testified that earlier in the tenancy he had had to tell the tenant not to go into the veterinarian clinic anymore. The tenant had been going in frequently to use the telephone. It appears that the tenant complied with that request.

The tenants who, until very recently, lived above the tenant told the property manager that they did not feel secure any more.

Until he went to see them none of the landlord's tenants had expressed any concern to the landlord about the tenant or his behaviour. Further, nothing, including the alleged incident with the male realtor, had been reported to the police. The landlord testified that they did not want to rock the boat or be involved in a confrontation. None the less, a

few days later the real estate company, who had been a tenant for 25 years, gave notice to end their tenancy.

On May 31, after talking to his commercial tenants the landlord instructed the property manager to start eviction proceedings. Later that afternoon the property manager served the tenant with a 1 Month Notice to End Tenancy for Cause. The reasons stated on the notice were:

The tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonable disturbed another occupant or the landlord.
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The tenant filed this application for dispute resolution the next day.

The property manager testified that he called the tenant's father. In that conversation the father expressed concern that his son may not be taking his prescribed medication. He said he would talk to his son. The property manager testified that this conversation confirmed his feeling that the tenant's neighbours were not feeling very comfortable.

The tenant's father testified that after this conversation he went to see his son. Not only did his son not show any sign of having been punched hard enough that he was knocked to the ground but he showed his father all of the records from the pharmacy that showed he had been filling his prescription regularly.

In support of the notice to end tenancy the landlord filed a letter from the veterinarian dated June 16, 2016. It stated:

"I write to express concerns about a tenant living in a suite in the rear of a hours located at [address]. The tenant can often be found in the parking lot of our building attempting to strike up conversations with clients who visit the various offices in the building and staff who work in the building. He will also often smoke in the parking lot or on the sidewalk adjacent to the parking lot. The topics of the tenant's conversations are often bizarre and awkward but on occasion can be quite alarming and unsettling. The tenant's conduct, topics of conversation and language are inappropriate and intolerable given the proximity of my business and access to my clients.

I hope and trust we can work to resolve this unfortunate situation."

There was no evidence from the realty company; either about unpleasant encounters with the tenant or its' reasons for ending their tenancy.

The tenant's parents and the tenant testified that there is another individual in the community who has the same first name, last name and year of birth as the tenant. However, the two men have different middle names and different birthdays. The other individual has an extensive record for drug related offences and was a witness in a widely report murder trial. After hearing the tenant's parent the landlord accepted that the tenant was not the same person who shows up on a Google search.

The tenant denied all the allegations made by the landlord. He denied having been involved in any altercation in the parking lot; following anyone to their car; or saying any of the things reported by the veterinarian's staff. He suggested that maybe a joke had been taken out of context or misconstrued. The tenant also testified that the landlord had told him before not to bother the businesses so he tries to keep to himself.

The landlord and the tenant both testified that the tenant did go to see the realty company after he had been served with the notice to end tenancy. The tenant said he was trying to fix things up. The landlord was concerned that this was a form of intimidation by the tenant.

The tenant testified that he complies with the prescription given by his doctor.

Analysis

On an application such as this the onus is on the landlord to establish, on a balance of probabilities, at least one of the grounds stated on the notice to end tenancy.

Although the *Residential Tenancy Act* does allow an arbitrator to consider hearsay evidence the evidence regarding the alleged assault on the male realtor is much more remote than ordinary hearsay. An unnamed person related information given to them by another unnamed person to the landlord, who repeated the story with very few particulars in his testimony. There is no evidence form the person who was involved in the incident; anyone who saw the incident; or anyone the male realtor may have told about the incident. Accordingly, I cannot consider this particular allegation when making my decision.

The evidence really boils down to the complaint voiced by the veterinarian clinic staff, in their letter and in their conversation with the property manager; and to the other concerns related to the property manger. I accept the property manager's evidence over the tenant's blanket denial.

After thinking very carefully about this sad and difficult situation I have decided that this tenancy must end. I find that the tenant's behaviour has significantly interfered with or unreasonably disturbed the other occupants and/or the landlord. The veterinarian's evidence is that the tenant's behaviour is having a negative impact on their business. Further it appears that the landlord has lost both a commercial and a residential tenant, in part, because of the tenant's behaviour. The tenant's application is dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and:

- the notice to end tenancy complies with section 52; and,
- the application is dismissed or the notice to end tenancy is upheld;

the arbitrator must grant an order of possession of the rental unit to the landlord.

In this case the tenant's application has been dismissed and the notice to end tenancy complies with section 52, therefore, I grant the landlord an order of possession. As the rent has been paid to the end of July the effective date of the order of possession will be 1:00 pm, July 31, 2016.

Conclusion

For the reasons set out above the tenant's application has been dismissed and an order of possession, effective **1:00 pm, July 31, 2016**, has been granted to the landlord. If necessary, this order may be filed in the Supreme Court and enforced as an order of that court.

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: July 12, 2016

Residential Tenancy Branch