



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant to cancel a notice to end tenancy for cause.

An agent for the company Landlord, the resident manager, and the Tenant appeared for the hearing. However, only the resident manager and the Tenant provided affirmed testimony during the hearing. The resident manager confirmed receipt of the Tenant's Application and the Tenant's documentary evidence which had been served prior to the hearing. The resident manager confirmed that they had not provided any written evidence prior to this hearing and were intending to rely on his oral evidence to support the issuing of the notice to end tenancy. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present evidence, make submissions to me, and cross examine the other party on the evidence provided.

Issue(s) to be Decided

Has the Tenant established that the notice to end tenancy ought to be cancelled?

Background and Evidence

Both parties confirmed that this oral tenancy for an apartment in a residential building started in July 2000. The Tenant currently pays rent in the amount of \$635.00 on the first day of each month. The Tenant paid a security deposit of \$220.00 at the start of the tenancy. The parties confirmed that there are no rental arrears in this tenancy.

The resident manager confirmed that he had personally served the Tenant with a 1 Month Notice to End Tenancy for Cause (the "Notice") on June 16, 2016. The Notice

was provided into written evidence and states a vacancy date of July 16, 2016. The Notice shows the reasons for ending the tenancy are because the Tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the Landlord; and
- Seriously jeopardised the health and safety or lawful right of another occupant or the Landlord.

The Tenant confirmed receipt of the Notice on June 16, 2016 and disputed the Notice by making an Application on June 20, 2016. The parties for the Landlord were invited to present evidence for the reasons elected on the Notice.

The resident manager testified that on June 16, 2016 he was in the laundry room of the residential building when he saw the Tenant outside cleaning his car. The resident manager explained that the Tenant had previously taken issue with allegations that the Landlord had not informed them in writing of fire alarm tests that were being conducted in the building. As a result of this, the resident manager expressed out of his concern for the Tenant whether the fire alarm had bothered him.

The resident manager testified that at this point the Tenant began to yell at him. The resident manager testified that the Tenant lost it and then came into the building and started to shout, yell and swear at him. The resident manager testified that the Tenant confronted him about the need to display notices in the building warning of fire alarm tests and that he should do his job properly and stop seeking so much power in the building.

The resident manager testified that he had two complaint letters from neighbours who witnessed the incident. The resident manager read these statements out during the hearing in which the neighbours write that the Tenant was yelling and screaming in the corridor at the resident manager and the resident manager had to ask the Tenant to stop this 10-12 times. The resident manager continued to read that the neighbours feared for their safety as the Tenant was raising his voice and using multiple profanities during his outburst. The resident manager was asked why he had not provided these letters into evidence prior to the hearing or served the Tenant with them. The resident manager replied that this was due to time restrictions and staffing levels.

The resident manager testified that a day prior to this hearing, the Tenant had flung his window open and shouted at him asking him to stop looking into people's windows. The resident manager submitted that this constituted harassment and as a result he called the police. The resident manager provided the police reference number during the

hearing and explained that the police did not attend and did not take any action. The resident manager testified that the Tenant's behaviour was unacceptable and that this was causing him undue stress, especially at a time when he is about to undergo chemotherapy.

The Tenant disputed the resident manager's testimony. The Tenant stated that he was not even aware of the neighbours' letters and had not been given a chance to see or respond to the letters prior to this hearing. The Tenant explained that he was a long time tenant of the building and that during this time he had eight separate disputes with the Landlord, some of which were decided by the Residential Tenancy Branch where the Landlord was ordered to complete repairs to the rental unit. The Tenant submitted that the Landlords have a vendetta against him and are constantly trying to seek ways to evict the Tenant and that this is beginning to constitute harassment.

The Tenant explained that on June 16, 2016 he did have an altercation with the resident manager but this was promoted by the resident manager. The Tenant explained that he had been asking the resident manager multiple times to display written notices of fire alarm tests because he was elderly and sick and needed to know whether the alarm was real or whether it was a test. The Tenant testified that the resident manager incited him by asking him whether the fire alarm had woken him up with a cheeky grin on his face and not out of any concern for the Tenant.

The Tenant admitted that he confronted the resident manager about this and that he did raise his voice and used some swear words but this was not to the extent that the resident manager had testified to. The Tenant explained that he is from a culture where loud voices are just part of normal communication. The Tenant acknowledged that he was frustrated with the resident manager but that the resident manager is colluding with the Landlord to end his tenancy as the Landlord have previously asked the Tenant to move out of the building.

The Tenant responded to the resident manager's testimony regarding the incident that occurred a day prior to this hearing. The Tenant stated that the resident manager was looking into his window for two minutes at which point he opened his window and told him to stop doing this.

The parties were asked whether they wanted to provide any more evidence before the hearing was concluded. The resident manager testified that he has always cared for the Tenant and treated him with the utmost of respect.

Analysis

Firstly, I find that the Landlord served the Tenant with a Notice that complied with Section 52 of the Act. Secondly, I accept that the Tenant personally received the Notice on June 16, 2016 and made his Application to dispute the Notice on June 20, 2016. Therefore, I find that the Tenant made the Application to dispute the Notice within the ten day time limit stipulated by Section 47(4) of the Act.

An ending of a tenancy is a serious matter. When a landlord issues a tenant with a notice to end tenancy for the reasons in this case, the landlord bears the burden of proving the reasons on the Notice disputed by the tenant. As a result, I have carefully examined the evidence of both parties and I make the following findings.

The resident manager relies on his oral testimony as evidence of the June 16, 2016 altercation that took place with the Tenant. The resident manager also sought to rely on written statements made by neighbours to verify the seriousness of the altercation. However, the Landlord failed to provide these letters/statements/incident reports into evidence or give the Tenant an opportunity to consider them prior to the hearing. In addition, the Landlord failed to provide these neighbours for the hearing to give direct testimony to support and verify their written letters and be subject to cross examination on that evidence. This evidence would have been vital for me to assess how significant the altercation between the resident manager and the Tenant really was and that it constituted a serious jeopardy to the health, safety and lawful right of the Landlord and the neighbours. Therefore, I have placed little evidentiary value and weight on the neighbours letters in making findings in this dispute.

I accept that on June 16, 2016 there was an altercation that occurred between the resident manager and the Tenant which involved the Tenant using loud voices and swear words. However, I find this is not sufficient evidence for me to find that this one altercation alone, which is the reason why the Notice was served to the Tenant, was so significant that it should warrant the ending of the tenancy.

I also find that in this case, it would have been prudent for the Landlord to issue the Tenant with a breach letter following the June 16, 2016 incident rather than reverting straight to the Notice as the first method of remedy to that one incident.

I find the resident manager's evidence with respect to the window incident one day prior to this hearing results in one party's word against the others and the resident manager's evidence including the lack of police action, is no more compelling than that of the Tenants. I find the Landlord failed to disclose: a history of altercations between the Tenant and the resident manager prior to the issuing of the Notice; and that the Tenant has continued with similar behaviour after the Notice was served to him.

Therefore, I find that the Landlord has failed to meet the burden to prove that the tenancy should end based on the evidence provided for this hearing.

Conclusion

The Landlord has failed to provide sufficient evidence to prove the Notice. The Tenant's Application is granted and the Notice is cancelled. The tenancy will continue until it is ended in accordance with the Act.

However, I caution the parties that in situations where a relationship is strained, a party should seek to communicate issues regarding a tenancy in writing and take sufficient measures to avoid personal contact and confrontation. In light of this decision, I also encourage both parties to document and record evidence to support any allegations that may arise in the future.

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 06, 2016

Residential Tenancy Branch