



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Maple Pool Campsite Incorporated
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, CNR

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and to set aside a Notice to End Tenancy for Unpaid Rent.

The Legal Advocate stated that on June 09, 2016 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted to the Residential Tenancy Branch with the Application were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On July 05, 2016 the Landlord submitted 14 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the Tenant on July 09, 2016. She stated that she did not serve the evidence to the Tenant in a timelier manner because she wanted to serve the evidence in person and she has been very busy.

The Tenant acknowledged receiving the Landlord's evidence on the evening of July 09, 2016. The legal Advocate stated that he has just been shown the evidence today and he needs additional time to consider the evidence.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure stipulates that a respondent's evidence must be served as soon as possible and in all events it must be received by the applicant not less than 7 days before the hearing. On the basis of the undisputed evidence I find that the Landlord's evidence was received by the Tenant one day prior to the hearing. I find that the evidence submitted by the Landlord does not comply with Rule 3.15, as it was not received by the Tenant within 7 days of the hearing.

Rule 3.17 of the Residential Tenancy Branch Rules of Procedure stipulates that I may accept "late" evidence if it was not available when the party served and submitted their evidence. As the Landlord's evidence was submitted to the Residential Tenancy Branch on July 05, 2016 I find that it was clearly available to be served to the Tenant prior to July 09, 2016, and I find that the delay in serving that evidence was unreasonable.

The parties were advised that the evidence submitted by the Landlord was not being accepted as evidence; that the Agent for the Landlord had the right to refer to the evidence during the hearing; and that if, during the hearing, the Agent for the Landlord believed it is necessary for me to view a particular document I will consider adjourning the matter to provide the Tenant and his Legal Advocate with time to consider that document. At the conclusion of the hearing the Agent for the Landlord stated that she does not feel it is necessary for me to physically view any of the documents she submitted and I therefore did not consider the need to adjourn this hearing.

The parties provided with the opportunity to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make relevant submissions.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, and the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Act*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on October 01, 2015 and that rent is due by the first day of each month.

The Agent for the Landlord stated that she personally served the Tenant with a One Month Notice to End Tenancy for Cause, dated June 01, 2016. She was uncertain of the date of service but she believes it may have been served on June 02, 2016. The Tenant stated that he located this Notice to End Tenancy on his door on June 02, 2016.

The One Month Notice to End Tenancy for Cause, which was submitted in evidence, declared that the Landlord wished to end the tenancy because the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Agent for the Landlord stated that the primary reason for ending this tenancy is that the Tenant has disturbed another occupant of the residential complex, who is the Witness. The Agent for the Landlord stated that the Witness has reported the disturbances to her but she has not witnessed any of the disturbances.

The Witness stated that:

- the Tenant is her brother;
- she does not want a relationship with her brother;
- approximately one month into his tenancy the Tenant was visiting her neighbours and was yelling at her from across the street;
- in response to the yelling she crossed the street and knocked the Tenant's hat off his head;
- she was charged with assault of knocking his hat off, but the charges were subsequently dropped;
- on December 24, 2016 he came to her door and offered her a beer;
- she shut the door and he threw his beer at her trailer window;
- after she had to euthanize her cat in April of 2016 the Tenant referred to her as a "cat killer" on approximately 12 occasions;
- on May 07, 2016 she was involved in a verbal altercation with the Tenant and some other neighbours;
- after the altercation on May 07, 2016 she was chasing the Tenant down the road in an attempt to get him to leave the area when her slipper fell off and struck him in the leg;
- the May 07, 2016 incident was reported to the police but she was not charged;
- on May 08, 2016 the Tenant banged loudly on the side of her trailer on three occasions between 1:00 a.m. and 1:40 a.m.; and
- she knows it was the Tenant who banged on the trailer because she saw him in the dark and they spoke.

In response to the allegations made by the Tenant, he stated that:

- approximately one month into his tenancy he was visiting people who live beside the Witness and was "minding his own business";
- the Witness crossed the street "in a rage" and hit him in the head several times;
- on December 24, 2016 he came to the Witness' door with a gift and she shut the door in his face;
- he does not drink beer and did not throw one at the Witness' trailer;
- he has not called the Tenant a "cat killer" to her face but on two occasions he told someone else she was a "cat killer" while the Witness was in the vicinity;
- on, or about, May 07, 2016 he was walking to the garbage when he observed the Witness chasing a neighbour;
- on, or about, May 07, 2016 he asked the Witness if she wanted a hug;
- on, or about, May 07, 2016 the Witness kicked him in the lower back;
- no charges resulted from the incident on May 07, 2016;
- he did not bang on the side of the Witness' trailer on, or about, May 08, 2016.

The Agent for the Landlord stated that, to a lesser degree, the Landlord wishes to end this tenancy because she was told that sometime in January of 2016 the Tenant kicked another occupant of the residential complex, for which he spent two months in jail. She

stated that the Landlord has not provided documentary evidence or called this occupant as a witness, as the altercation happened many months ago.

The Tenant stated that:

- he was charged with assaulting another occupant of the residential complex;
- the charges arose from an incident when the occupant came to his house and was verbally assaulting him;
- the occupant grabbed his front door to prevent him from closing the door;
- when he let go of the door the occupant fell backwards;
- he plead guilty to this charge as part of a plea bargain with one other unrelated charge of assault and a charge of theft;
- he received a consecutive sentence of seven days, seven days, and fourteen days for these three offences.

The Legal Advocate noted that there have been no further altercations between the Tenant and the other occupant the residential complex.

The Agent for the Landlord stated that, to a lesser degree, the Landlord wishes to end this tenancy because the Agent for the Landlord feels threatened whenever she discusses issues with the Tenant. She was unable to articulate why she feels threatened by the Tenant, other than to explain it is a feeling and that she simply wants to get away from him.

The Tenant stated that although the Agent for the Landlord sometime does not listen to him, he behaves rationally, logically, and respectfully whenever he is speaking with her.

The Agent for the Landlord stated that she personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, dated June 01, 2016. She was uncertain of the date of service but she believes it may have been served on June 02, 2016. The Tenant stated that he located this Ten Day Notice to End Tenancy on his door on June 02, 2016 when he located the One Month Notice to End Tenancy.

The Ten Day Notice to End Tenancy for Cause, which was submitted in evidence, declared that the Notice was served because the Tenant had failed to pay utilities of \$112.68 that were due on June 10, 2016.

Analysis

Section 47 of the *Act* authorizes a landlord to end a tenancy if a tenant unreasonably disturbs or unreasonably interferes with another occupant of the residential complex. The burden of proving that a landlord has grounds to end a tenancy rests with the landlord.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of

proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden.

I find that the Landlord has submitted insufficient evidence to show that the Tenant threw a beer at the Witness' trailer on December 24, 2016 or that he banged on the side of her trailer in the early hours of May 08, 2016. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Witness' testimony that these events occurred or that refutes the Tenant's testimony that they did not occur.

I find that the Landlord has submitted insufficient evidence to show that the Tenant provoked the physical altercation that occurred approximately one month into his tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Witness' testimony that the Tenant was yelling at her prior to the altercation or that refutes the Tenant's testimony that he was minding his own business prior to the physical altercation. The fact that the police charged the Witness has little bearing on this matter, in my view, as it is entirely possible that charges would have been laid even if there was a verbal altercation, as violence is not typically an acceptable response to a verbal altercation.

I find that the Landlord has submitted insufficient evidence to show that the Tenant unreasonably disturbed the Witness on, or about, May 07, 2016, when there was a physical altercation. In reaching this conclusion I was heavily influenced by the Witness's testimony that the physical altercation occurred when she was chasing the Tenant down the road. Given that the physical altercation appears to have been the direct result of the Witness chasing the Tenant, I cannot conclude that this disturbance was the fault of the Tenant.

On the basis of the undisputed evidence of the Witness, I find that she was involved in a verbal altercation with some neighbours on May 07, 2016. I find that the Landlord has submitted insufficient evidence to show that the Tenant was involved in this verbal altercation. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Witness' testimony that the Tenant was involved in the verbal altercation or that refutes the Tenant's testimony that he was not involved in the altercation.

On the basis of the undisputed evidence I find that the Tenant has, on more than one occasion, referred to the Witness as a "cat killer" while she was nearby. Given the acrimonious relationship between the Tenant and the Witness, I cannot conclude that these comments can be considered to have unreasonably disturbed or significantly disturbed the Witness. Given that the Witness has acted aggressively towards the Tenant on more than one occasion during this tenancy, I find that the comments made by the Tenant are not sufficient grounds to end this tenancy.

To provide some clarity to this dispute, all parties are advised that the Landlord may have the right to end the tenancy of the Tenant and/or the Witness if they engage in verbal or physical altercations in the future.

I find that there is insufficient evidence to conclude that in January of 2016 the Tenant kicked another occupant of the residential complex. In reaching this conclusion I was heavily influenced by the fact the individual who was allegedly kicked did not provide any evidence regarding the altercation; the information provided by the Landlord was hearsay evidence; and the Tenant provide a different version of events.

On the basis of the testimony of the Tenant I find that in January of 2016 an occupant of the residential complex was injured during a physical altercation with the Tenant. In the absence of evidence to the contrary, I accept the Tenant's testimony that the injury occurred when the occupant was preventing him from closing his front door. As it appears the injured occupant was at least partially responsible for this disturbance, I cannot conclude that the tenancy should end on the basis of this disturbance.

In determining that the tenancy should not end on the basis of the disturbance in January of 2016, I am influenced, to some degree, by the undisputed evidence that there have been no further altercations between these two parties since the disturbance in January.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant acts in a threatening manner towards the Agent for the Landlord. In reaching this conclusion I was heavily influenced by the Agent for the Landlord's inability to articulate why she feels threatened by the Tenant. Although I recognize that the Agent for the Landlord's inability to articulate her reasons for feeling threatened may be related to an apparent language barrier, that does not negate her obligation to provide evidence that the Tenant is behaving in a manner that justifies ending his tenancy.

After considering the evidence in its entirety I find that the Landlord has provided insufficient evidence to establish that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. I therefore grant the Tenant's application to set aside the One Month Notice to End Tenancy for Cause that is dated June 01, 2016.

Section 46 of the *Act* authorizes a landlord to end a tenancy if rent and, in some circumstances, utilities are not paid when they are due. Even if I concluded that the Tenant was obligated to pay \$112.68 in utilities by June 10, 2016, I would set aside the Ten Day Notice to End Tenancy as the Notice was served before the utility payment was allegedly due. A Ten Day Notice to End Tenancy cannot be served prior to the date a payment is due. I therefore grant the Tenant's application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent that is dated June 01, 2016.

Conclusion

The One Month Notice to End Tenancy for Cause, dated June 01, 2016, and the Ten Day Notice to End Tenancy for Unpaid Rent, dated June 01, 2016, have both been set aside. This tenancy shall continue until it is ended in accordance with the *Act*.

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