



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LYNN VALLEY LIONS HOUSING

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the "Act") to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice").

Tenant BH, tenant HH and the tenants advocate TB (the "advocate") attended the hearing. The landlord's four agents, landlord LA (the "landlord"), "landlord LB," "landlord RN" and "landlord DM" attended the hearing. All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she is the property manager of the landlord company named in this application (also referred to as "landlord" in this decision). Landlord LB confirmed he was a past Director of the landlord company named in this application. Landlord RN and landlord DM confirmed that they are each Directors of the landlord company named in this application.

The landlord confirmed receipt of the tenants' application for dispute resolution. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on May 1, 1995 on a month-to-month basis. Rent is based on the tenants' income and varies month to month. Rent is payable on the first of each month. The tenants remitted a security deposit in the amount of \$300.00 at the start of the tenancy. The tenants continue to reside in the rental unit.

The landlord issued a notice to all tenants of the complex that a lawn care company would be conducting lawn care throughout the townhome complex on June 9 and 10, 2016.

The tenants acknowledged receipt of the landlord's 1 Month Notice dated June 27, 2016 on the same date, by way of posting to the rental unit door where the tenants were residing. The grounds to end the tenancy cited in that 1 Month Notice were;

- 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 tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord

Landlord

It is the landlord's position that the notice to the tenants regarding the scheduled lawn care maintenance was a courtesy notice and by no means required. The landlord explained that the scheduled work was to be conducted on common property, not property the tenant had exclusive possession of.

The landlord explained that the lawn care work was not completed on June 9 and 10, 2016 due to weather conditions. The work was rescheduled for June 17, 2016 and resumed this date within the townhouse complex. The landlord acknowledged a new notice was not issued to the tenants informing them of this new date.

Work was conducted to the rear of the tenants' rental unit, past the tenants' concrete patio and on the soft surface which the landlord described as a common area. The landlord testified that although separator fences stood on either side of the concrete patio, there was no fence enclosing these two separator fences. The rear was open and accessible to foot traffic. This rear area is where the work was conducted.

The landlord testified that on June 17, 2016, upon discovering a lawn care employee in the common area to the rear of his rental unit, tenant BH approached the landlord and landlord RN. Both the landlord and landlord RN testified that tenant BH appeared to be in an agitated state. Tenant BH used profanities and shook his fist at the landlord. Tenant BH yelled about his private property and threatened to call the police.

The landlord submitted a witness statement from the employee of the lawn maintenance company that conducted the work. The statement indicates that tenant BH approached the employee and questioned him in an “agitated” manner. As per the statement, tenant BH told the employee to stop working as this was his “private property.” Tenant BH swore, slammed his sliding door and remerged in the front of the rental unit at which time he began to yell.

The landlord called the police and filed a harassment complaint against tenant BH. The landlord provided a police file number. The landlord provided a doctor’s note that indicates the landlord is experiencing anxiety and fearfulness due to a recent threat in the work place that occurred on June 17, 2016. The landlord testified that she has been prescribed drugs to reduce her anxiety. Since this incident with tenant BH, the landlord has been directed to work behind locked doors at all times to ensure her safety. Landlord DM testified that this incident has placed an unacceptable level of fear in the landlord’s workplace and has placed the landlord under extreme duress.

Tenant

The tenants advocate contended that the landlord did not provide a valid notice of entry and accordingly had no authority to enter the tenants’ private yard.

Tenant HH testified that the bamboo plant the employee was seen cutting sits inside the yard. Tenant HH further testified that normally they maintained their yard and did not know the landlords to ever maintain their yard.

Tenant BH testified that his yard backs onto a forested area and is accessible by gates on either side of the yard. Tenant BH explained that on June 17, 2016 he observed a man in his yard that he did not recognize. The man was dressed in black, was not wearing a safety vest or logo shirt. Tenant BH testified that the landlord’s son normally conducted the lawn maintenance in the front and back common areas once a year.

Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed or seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The onus is on the landlord to prove the significant interference, unreasonable disturbance or jeopardized health or safety took place by the tenant or person permitted

on the property by the tenant. The landlord provided evidence in the form of witness statements and testimony regarding tenant BH's behaviour that led to the 1 Month Notice being issued.

Tenant BH did not speak to the alleged behaviour on June 17, 2016. Rather the tenants' advocate contended that the landlord did not have authority to enter the residential property. Based on the absence of tenant testimony actively disputing the behavior, on the witness statement and testimony of the landlords, I find the tenant did yell, use profanities, and shake his fist at the landlord on June 17, 2016.

The matter that must be decided is whether this behaviour constitutes significant inference, unreasonable disturbance or jeopardized health or safety of the landlord. It is irrelevant whether the landlord had authority to enter the residential property. I find the landlord has proven that the tenant has engaged in behaviour that was inappropriate on June 17, 2016. I also find the landlord has likely endured some stress as a result of this incident. However I do not find that one verbal altercation as described above, in a twenty one year tenancy constitutes a significant inference, disturbance or jeopardized safety to the landlord. For this reason, I find the landlord has not met the burden of proof and accordingly, I uphold the tenants' application to cancel the 1 Month Notice.

Conclusion

The tenants' application to cancel the 1 Month Notice is upheld.

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: August 16, 2016

Residential Tenancy Branch