



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Canadian Mental Health Association
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The hearing did not conclude in the time scheduled and was adjourned to later in the day for continuation. The tenant attended the hearing in the morning session but did not testify and did not attend the afternoon session. An agent for the tenant attended for both sessions and gave affirmed testimony. An agent for the landlord attended for both sessions, gave affirmed testimony and called 2 witnesses who also gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses, and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began in June, 2008 and the tenant still resides in the rental unit. Rent is subsidized, and the tenant's share is \$375.00 per month which is payable on the 1st day of each month. No rental arrears have accumulated, but the tenant has not yet paid his share of the rent for this month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$200.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is an apartment within a complex managed by the landlord's agent.

The landlord's agent further testified that on November 30, 2016 she personally served the tenant with a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided. It is dated November 30, 2016 and contains an effective date of vacancy of December 31, 2016. The reason for issuing it states: Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

In August, 2016 the tenant was served with a 1 Month Notice to End Tenancy for Cause for aggressive threatening behavior toward the landlord's agent and other tenants in the rental complex. The parties had a partnership meeting and signed a support partnership agreement, a copy of which has been provided. It outlines that the tenant will not cause any disturbances, have respect for others' guests, being courteous to others in common areas, and a single violation could be cause for eviction. It was signed by the parties on September 14, 2016, and the landlord agreed to cancel the 1 Month Notice to End Tenancy for Cause.

Starting in October, 2016 the tenant has again behaved in threatening manner. On one occasion the tenant walked up behind a neighbouring tenant and said, "Believe you me, you will return the guitar." The neighbouring tenant was afraid. The landlord's agent talked to the tenant and told him to mind his own business or he would lose his tenancy, and the tenant said he understood but the landlord's agent started to get complaints of numerous people being in the back yard behind the tenant's rental unit.

During the weekend of November 24, 2016 a neighbouring tenant complained of the tenant banging on the door at night. It happens all the time and the neighbouring tenant is too afraid to get up and answer the door. The landlord's agent believes the tenant intended to go to another unit. Another tenant has also complained of the same.

On November 30, 2016 a witness went to the landlord's agent in tears saying she saw the tenant stomp up to the 3rd floor and down again, knocked on the witness' door and police were called. Police talked to both parties.

The tenant has also threatened the landlord's agent. After the eviction notice was issued in August, 2016, the tenant was warned to stop walking in the back area and the landlord's agent put up a sign on the back fence. The landlord's agent witnessed 2 people doing so at the beginning of August, 2016 and the landlord's agent issued a general traffic memo on the fence and gave a copy to the tenant. There is no reason for people to use the back door. The tenant barged into the landlord's office swearing and saying that he was targeted, while another tenant was there. The landlord's agent feared him, and received more reports of back traffic.

The intimidating behaviour goes back to September, 2013 when the tenant threatened a co-worker of the landlord's agent. Two years later, the tenant called her a bitch through her back patio door. In August, 2015 a co-worker witnessed constant traffic from the back patio, and the tenant admitted to the landlord's agent that he had given a person marijuana. In January, 2016 the tenant assaulted another tenant's guest and police were called. In July, 2016 the tenant called another tenant a bitch and accused the landlord's staff of stealing his bird feeder.

Many times staff has noticed suspicious behaviour, including people attending to the tenant's back door all hours of the day and night. They stay for about 5 minutes and leave.

The landlord issued the 1 Month Notice to End Tenancy for Cause as a result of the tenant's breach of the partnership agreement.

The landlord's first witness (JT) is a tenant in the complex and testified that the tenant spoke to her in the lobby saying, "You will give back the guitar, believe me." It was threatening, and the issue wasn't his business. The witness has a heart condition, and is afraid the tenant will attack her. People don't talk because they fear him.

The witness saw through the peephole in her rental unit the tenant stomping loudly up to the 3rd floor in the middle of the night. The tenant visits another neighbouring tenant who lives on the 2nd level, and had no reason to go up to the third level.

The landlord's second witness (NS) is a co-worker of the landlord's agent and also looks after other buildings. She testified that in January, 2016 the landlord's agent asked the witness to attend to a rental unit with her. There were about 5 people in attendance discussing an alleged assault by the tenant upon a guest of a neighbouring tenant. During that conversation the tenant banged loudly on the door. The landlord's agent answered the door, and the tenant was yelling, screaming and carrying on wanting to be invited to the meeting. He wanted to talk, apologized, but wanted to confront the person who was allegedly assaulted, and was told to leave. He was not apologetic and wanted to argue. It was scary. He didn't leave right away, but after 2 or 3 minutes because the police would be called if he didn't.

The witness was also present when the 1 Month Notice to End Tenancy for Cause was issued. The tenant was taken aback when served, and yelled very loudly at them. He was told to stop and to settle down and go back to his unit, and the two walked away. The tenant is a big guy, yelling very loudly down the hallway at them and it was scary. The tenant was threatening in his demeanor, not in his words.

The tenant's agent testified that he has been working with the tenant for 12 years providing counselling support for pain management and general living. The tenant contacts the agent when he wants to talk, but substance abuse is no longer an issue.

The tenant's agent was present and signed the support partnership agreement along with the landlord's agent and the tenant, and agrees what the terms were.

He also testified that the tenant agrees with the evidence and acknowledges some behavior, but some of the allegations are inaccurate and prejudicial. The tenant denies assaulting a guest of another tenant; the tenant was defending himself after the guest assaulted him first. The tenant also denies threatening a tenant about a guitar, and told his agent that what he actually said was, "You should do the right thing and give the guitar back," and they have had no contact since.

The tenant sleepwalks, and the landlord's agent has acknowledged knowing that as well.

The tenant is anxious and fearful that any action could result in eviction even if he's not guilty of anything, and has been since the notice to end the tenancy was issued in August, 2016.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the reason for issuing it is in dispute – Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. To establish whether or not the reason is justified, there must be an interference or disturbance that is significant enough to warrant ending a tenancy contract for cause.

With respect to any allegations of the landlord that the tenant has sold marihuana from the rental unit has not been proven and is not relevant, in that there is no evidence that anyone was disturbed. The testimony and evidence that I find to be relevant to the reason for issuing the 1 Month Notice to End Tenancy for Cause are the:

- support partnership agreement,
- testimony of the tenant stomping and banging at night;
- yelling and swearing at the landlord's agent and others; and
- scaring people.

A landlord has an obligation to provide other tenants with their right to quiet enjoyment including freedom from unreasonable disturbance. I accept that history in this long term tenancy has shown long periods of no disruptions by the tenant to others, however I find the testimony of the landlord's agents and witnesses to be significant enough to end the tenancy considering the support partnership agreement and scaring people since.. The tenant's application is hereby dismissed.

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the 1 Month Notice to End Tenancy for Cause dated November 30, 2016 and I find that it is in the approved form and contains information required by the *Act*.

The landlord's agent advised that in the event that I dismiss the tenant's application, the landlord would be content with an effective date of vacancy of January 31, 2017, and I hereby grant an Order of Possession in favour of the landlord effective that date at 1:00 p.m.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective January 31, 2017 at 1:00 p.m.

This order is final and binding and may be enforced.

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: January 20, 2017

Residential Tenancy Branch