



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRST NATION FRIENDSHIP CENTRE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution pursuant to the *Residential Tenancy Act* (the "Act"). The tenant is seeking to cancel the landlord's One Month Notice To End Tenancy for Cause (the "One Month Notice")

The landlord's agent (the "landlord") and the tenant appeared at the teleconference hearing. The tenant was accompanied by his support worker and his case management worker. The landlord and tenant gave affirmed testimony. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

The landlord submitted late evidence which was faxed to the Residential Tenancy Branch on December 17, 2016. The landlord testified that she needed the assistance of a technician to produce some of the security camera printouts which caused the delay. However, there were additional documents that were not related to the security camera footage in the landlord's evidence package.

The undisputed evidence established that the tenant received the landlord's evidence package on December 17, 2016, however, the tenant testified that he hadn't had an opportunity to review it with his support worker prior to the hearing. As the tenant has mental health issues that require the support of his worker for purposes of his application, it would be prejudicial to the tenant to accept the late evidence. Accordingly, the late evidence was not relied upon for purposes of the hearing, however, the landlord was permitted to testify as to the contents of the documentary evidence.

Issue to be Decided

- Should the landlord's One Month Notice be cancelled?

Background and Evidence

The undisputed evidence established that a month to month tenancy started on August 1, 2014 pursuant to a written tenancy agreement.

The landlord served a One Month Notice dated November 1, 2016, with an effective date of November 30, 2016, by posting a copy on the tenant's door. The reasons given by the landlord for ending the tenancy are as follows:

- 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;
- the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
- the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The landlord relied solely upon an incident that occurred on October 26, 2016 as the reason given on the One Month Notice.

The undisputed testimony of the landlord and the tenant was that on October 26, 2016 at 11:41 p.m. the tenant attended the apartment of another female occupant on the floor above the tenant's unit. The tenant, who was wearing a ski mask, knocked on the female occupant's door.

According to the landlord, the female occupant looked through her peephole and was extremely frightened so she didn't open her door and instead contacted the RCMP. The RCMP attended but could not locate the person. The tenant was later identified by the landlord on security camera footage as the man who knocked on the female occupant's door. The landlord testified that the occupant was somewhat comforted to know who it was that knocked on her door. However, the tenant said she was uncomfortable seeing the tenant in the building because of his peculiar behavior. There were no particulars given as to the tenant's peculiar behavior that the female occupant found uncomfortable. The female occupant did not stay in her rental unit after the incident as

she was fearful, however, the landlord testified that she has since returned to her unit. The landlord did not know when the female occupant returned to her rental unit.

The female occupant did not attend the hearing. The landlord testified that the female occupant had not provided a written statement that was requested of her. The landlord had no explanation as to the reason why she did not do so. The landlord had no information as to the status of the RCMP investigation.

The landlord also testified about an unrelated incident on October 12, 2016 involving the tenant and staff. The tenant was working on his rap music in an area of the building where he was permitted use for that purpose. The landlord testified that the tenant became angry and agitated with staff after being told that he was not permitted to use the area for his music anymore and that he had to return the key. The landlord testified that the tenant became very agitated and started to punch himself. The landlord testified that the tenant was yelling at the staff before he finally agreed to give the keys back and left with his belongings.

With respect to the incident on October 26, 2016, a statement written on behalf of the tenant and signed by the tenant indicated that the tenant's intention was to "be romantic...[with] the element of surprise". The tenant was questioned about this explanation by the landlord and the tenant elaborated as to what he meant by "romantic". The tenant testified that he was a fan of rap music and that he had seen an album cover showing members of a rap group wearing balaclavas which he thought looked "cool". In trying to be "cool", the tenant put on a balaclava and knocked on the female occupant's door. The tenant testified that it was his intention to surprise the female occupant by taking off the balaclava when she opened the door to see it was him.

The tenant had no prior conversations with this occupant although he said he had known her from high school. The evidence of the tenant, which was supported by his support worker, was that he had major limitations in his ability to socialize which was attributed to his mental health issues. The tenant apologized for his poor judgment. The tenant testified that he had no reason to go to the fourth floor and that he wouldn't put on a mask again.

During the hearing the landlord testified that she was fearful for the safety of other female occupants in the building. In support of her concerns, the landlord alleged the tenant was spying on her by 'Facebook video' on December 13, 2016. At the time, the landlord described seeing an image of herself on her cellphone.

The support worker for the tenant responded to the allegation by looking at the calls on the tenant's phone on December 13, 2016. The support worker stated that she only saw a missed 'FaceTime video' call from the landlord to the tenant on that date. The support worker suggested that the landlord was mistaken and that it was the landlord's phone that accidentally called the tenant's phone without the landlord being aware of the outgoing call. Despite the innocent explanation provided by the support worker, the landlord continued to believe that the tenant was spying on her through her phone video camera.

The tenant's support worker, who is female, stated that she has worked with the tenant alone on a one on one basis for one and a half years with no fear for her own safety. The support worker explained that due to the tenant's mental health issues, he will act out against himself and inflict harm on himself, but not others. For these reasons, the support worker did not view the tenant as a safety risk to others. The support worker confirmed that the tenant is taking prescription medication for his mental health issues.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the tenant's innocent explanation for his behavior on October 26, 2016 as I find that the tenant's explanation is plausible in light of the tenant's mental health issues. I find that the tenant did not intend to frighten the female occupant nor cause her any harm. I accept that the tenant has major limitations in his ability to socialize such that his behavior amounted to an act of poor judgment rather than a threat to the safety of the female tenant. The tenant offered a sincere apology acknowledging, in hindsight, that his behavior was not appropriate. The evidence supports that this was an isolated incident.

I find that the events on October 12, 2016 are not related to the reasons given in the One Month Notice which solely refers to the incident on October 26, 2016 as the basis for ending the tenancy.

I find that there is insufficient evidence to support the landlord's fears for the safety of the other female tenants in the building. The landlord relied upon her allegation that the tenant was spying on her through her phone video as support for her ongoing concerns. I do not accept the landlord's account as I find the support worker's explanation more plausible on the basis of what the support worker said she saw on the tenant's phone.

I find that there is insufficient evidence that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. In making this finding, I have taken into account the tenant's innocent explanation as to the events of October 26, 2016, and the fact that the female occupant did not attend the hearing nor submit a statement about the incident. Without further evidence from the female occupant, it is uncertain as to the impact that this incident has had with respect to her tenancy.

Taking into account the tenant's innocent explanation of the events on October 26, 2016, I also find that there is insufficient evidence that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The term "illegal activity" in section 47(e) of the *Act* is explained in Policy Guideline #32 as follows:

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The burden of proof is also explained in Policy Guideline #32 as follows:

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

The landlord did not refer to any specific statute or bylaw in her submissions nor provide a copy of any relevant statute or bylaw. As such, I find that there is insufficient proof that the tenant's conduct constitutes illegal activity.

Based upon my findings, I cancel the landlord's One Month Notice due to insufficient evidence to support the landlord's reasons to end the tenancy.

Conclusion

The One Month Notice to end the tenancy is cancelled and the tenancy will continue.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 18, 2017

Residential Tenancy Branch