



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Should the 1 month Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

The tenant has occupied the rental unit since February 1, 2008. The monthly rent was initially set at \$800.00, payable on the first day of every month. Effective August 1, 2016 the rent increased to \$823.20 per month.

The landlord posted a 1 Month Notice to End Tenancy for Cause on the tenant's door on February 9, 2017 (the "1 Month Notice"). The 1 Month Notice has a stated effective date of March 31, 2017 and indicates the reason for ending the tenancy is 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*". In the details of cause the landlords wrote: "The tenant [name of tenant] has interfered with and unreasonably disturbed us (the landlords) to the extent of taking us to Small Claims court recently. His case was unfounded and he eventually withdrew the claim, but his hostile behaviour towards us is an ongoing concern as [name of tenant] has legal access to two common areas of our house...the laundry room and the garage. We have reason to fear that his aggressive behaviour could easily escalate to a physical threat so we are concerned for our safety and secure enjoyment of our home and property."

I informed the parties that pursuing a legal remedy such as taking the other party to Small Claims court is not a basis for eviction and I instructed the parties to limit their submissions to the allegations of hostile and aggressive behaviour. Below, I have summarized the parties' respective positions.

Landlord's submissions

1. On September 24, 2016 the tenant confronted the female landlord while she was cutting broken branches off a fruit tree which included giving her unsolicited advice about care for fruit trees, swearing at her and yelling at her.
2. In October 2016 the tenant got in the female landlord's face and loudly accused her of stealing his bleach.
3. Last summer, the tenant shot a hummingbird on the property with a pellet gun. The landlord told the tenant she was not impressed with his actions.
4. Last summer, when the landlords would sit on their balcony to have dinner, the tenant would light up a marijuana cigarette on his patio located beneath the balcony, interfering with the landlords' ability to enjoy their dinner. The landlord acknowledged that she was aware the tenant smokes marijuana but before last summer she did not notice the smell of it before.
5. The landlord is of the position the tenant is using the shared laundry room as a means to retaliate against the landlords. For example: the tenant took the landlord's damp items out of the dryer when it was the landlord's laundry day. The tenant entered the laundry room while the landlord was in the laundry room on her laundry day, with the landlord dressed only in a housecoat, to complain about something. Also, the tenant was doing a very large amount of laundry in November 2016. The landlord avoids going into the laundry room because of the tenant.
6. The landlord also pointed out that the tenant has a key to the garage, which she described as common area because the electrical panel is in there. Both parties provided consistent testimony that the tenant does not use the garage for parking or storage and the electrical breakers have not been an issue during the tenancy. The tenant was agreeable to returning the key to the garage to the landlord. I ordered the tenant to do so immediately.

Tenant's responses

1. The tenant acknowledged that he became upset when he saw the landlord cutting branches from the fruit tree and that he swore and yelled in her direction after she walked away from him. The tenant acknowledged that ownership of the fruit trees belongs to the landlords but the tenant was of the position that he has some form of right to care for them and have the fruit the trees produce. Reimbursement for the cost of the fruit trees was the subject matter that was before the Small Claims court case that was eventually withdrawn by the tenant. The tenant attempted a number of times to

introduce evidence as to the proper way to care for and prune fruit trees but I did not permit such submissions as it was not relevant to the tenant's conduct at issue. The tenant attempted several times to justify his conduct, indicating the landlord's actions with respect to the fruit trees had upset him and that he only yelled because the landlord had walked away from him.

2. The tenant denied getting in the female landlord's face and accusing her of stealing his bleach. Rather, the tenant explained that he had been discussing the matter with the male landlord.
3. The tenant admitted to shooting a hummingbird with a pellet gun on the residential property. The tenant attempted to justify his conduct but by explaining the hummingbird was a transient one from Mexico that was "squawking" in his ear and interfering with the resident hummingbirds that he had been feeding.
4. As for smoking marijuana on the patio, I did not solicit a response from the tenant. I noted that the tenancy agreement provides that "smoking will not be permitted in the suite" but does not prohibit the tenant from smoking outside on his patio or other outside spaces on the property and the landlords did not indicate that they had any communication with the tenant about the smoking being a disturbance to their enjoyment of their balcony.
5. The tenant acknowledged that there is a laundry schedule that was established but that over the past nine years of tenancy both he and the landlords had been flexible in using the laundry room even if it was not their scheduled day. The tenant was of the position that he has not had a malicious intention with respect to use of the laundry room. The tenant acknowledged that he walked into the laundry room when the landlord was in there in her housecoat and that she did appear surprised to see him but that entering the laundry room while the landlords were in there was not an uncommon behaviour in the past. The tenant acknowledged that he took the landlord's items out of the dryer and placed them on top of the dryer so that he could dry his comforter. The tenant acknowledged he had done a larger than usual volume of laundry but explained he was cleaning larger items that do not get cleaned often and he has been preparing to move. The tenant also explained that sometimes dog hair gets on his items after the landlords have done their laundry so he has to re-wash the items.
6. I considered the landlords' concerns over the tenant's access to the garage to be resolved since the tenant acknowledged he does not use the garage and he will return the key to the garage to the landlords.

The tenant attempted to introduce evidence with respect to the landlord's non-compliance with the Act. I did not permit such submissions as those issues were not raised on his Application for Dispute Resolution. Rather, I informed both parties that the Act provides for rights and obligations of both landlords and tenants and that they are expected to comply with those obligations. Accordingly, I encouraged both parties to familiarize themselves with the requirements of the Act and conduct themselves appropriately.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

The reason indicated on the 1 Month Notice before me permits a landlord to end a tenancy where the tenant has *unreasonably* disturbed or *significantly* interfered with other occupants or the landlord. It is important to note that with the inclusion of the words “unreasonable” and “significantly” must be given meaning. Accordingly, it is not enough to be disturbed or suffer an interference to warrant eviction without it being unreasonable or significant. Where there are multiple living units on a property, such as in this case, one should expect that from time to time they may be disturbed by the sounds or presence of another person residing on the property. When disturbances or interference is on-going or repetitive or severe then “unreasonable” or “significant” disturbance or interference may be concluded.

Upon hearing from the parties, I have little doubt the tenant’s actions have become annoying to the landlords and on occasion disturbing but I am of the view that eviction is not warranted at this time for reasons provided below. Accordingly, I cancel the 1 Month Notice with the effect that the tenancy continues at this time. However, with a view to limiting future disputes, I have issued orders and authorization pursuant to the authority afforded me under section 62(3) of the Act.

I noted that most of the disturbances or annoyances described by the landlords occurred several months prior to the issuance of the 1 Month Notice. The timing of the issuance of the 1 Month Notice appears to be more related to the landlords having to appear in Small Claims court to address the tenant’s monetary claim against them than the disturbances. I make this finding considering the landlords had appeared in Small Claims court only days before issuing the 1 Month Notice and the first reason given in the details of cause pertains to the Small Claim court action. As the landlords were informed at the hearing, engaging a legal remedy that is available under the laws of our land is not a basis for eviction, even if the case was dismissed or withdrawn. Below, I proceed to address the disturbances alleged by the landlords.

Having heard consistent testimony from the parties that the tenant thrust unsolicited advice, yelled and swore at the landlord in September 2016 while she was cutting branches from the fruit tree, I find the tenant’s conduct was inappropriate and disturbing. However, I am of the view that the incident was not so significant that it warrants eviction as evidence by the landlords not taking such action at that time. Nevertheless, I find the tenant’s repeated attempt to describe tree care techniques and justification for his conduct during the hearing to be concerning and the tenant is cautioned that repeated conduct such as this may be grounds for eviction in the future. As I told the tenant at the hearing, the planted trees are the property of the landlords and there is no justification for yelling, swearing or otherwise harassing the landlords as the tenant’s remedy for a dispute concerning the fruit trees was a civil one. The

tenant has already explored that remedy and did not succeed. With a view to avoiding repeated behaviour such as this, **I ORDER the tenant to refrain from confronting, yelling or swearing at the landlords with respect to use, care or maintenance of their own property.**

I also find the tenant's decision to shoot a pellet gun at and kill a bird on the residential property to be highly inappropriate, disturbing and possibly illegal. This event also occurred last summer yet the landlords did not take action to evict at that time. Accordingly, I find the event was no so significant as to warrant eviction this time. However, given the tenant's attempts to justify his conduct, I ORDER the tenant to refrain from killing any domestic animals or wildlife on the residential property, or discharging any weapon.

The landlord made several other allegations against the tenant with respect to his use of the common laundry room. I am of the view that the tenancy has soured and it is understandable that the landlords seek more distance from the tenant than what was observed in the past. I find it reasonably likely that a greater flexibility had been enjoyed in the past as explained by the tenant but obviously the landlords do not want to offer the same flexibility any longer. However, I am unsatisfied the tenant has been using the laundry room in a malicious way that constitutes a basis for eviction considering he denied getting in the female landlord's face about the missing bleach and he provided a reasonable explanation for washing a larger than usual amount of laundry. With a view to assist the parties avoid future conflict in the laundry room, I **AUTHORIZE the landlords to lock or install a lock so that the tenant's access to the laundry room is restricted. I ORDER that the landlords must ensure that the tenant is provided full access to the laundry room no later than 8:00 a.m. until at least 9:00 p.m. on his scheduled laundry days.**

Given the tenant's agreement to return the garage door key to the landlords, **I ORDER the tenant to return the garage door key to the landlords immediately.** Should an electrical breaker need to be reset the tenant will have to contact the landlords and the landlords shall ensure it is reset without unreasonable delay.

As for smoking marijuana on the patio, the tenant is now considered to be put on notice that smoking marijuana on the patio while the landlords are on the balcony above is disturbing to them. I refer the parties to Residential Tenancy Policy Guideline 32: *Illegal Activities* for further information on this subject.

The landlords satisfied me that the tenant's actions have disturbed them but the landlords did not establish that the tenancy should end due to "unreasonable" disturbance or "significant" interference. Therefore, I order the parties to share in the cost of this proceeding. Since the tenant paid \$100.00 for the Application, I award the tenant recovery of \$50.00. The tenant is authorized to deduct \$50.00 from a subsequent month's rent payment to recover this award.

Conclusion

The 1 Month Notice has been cancelled and the tenancy continues at this time.

I have issued orders to the parties in this decision and I have authorized the landlord to limit the tenant's access to the common laundry room as described in this decision.

The tenant has been awarded recovery of one-half of the filing fee paid for this Application and is authorized to deduct \$50.00 from a subsequent month's rent to recover this award.

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: March 17, 2017

Residential Tenancy Branch