



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REAL ESTATE INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, LRE MNR MNDC, CNR, CNC

Introduction

By an application made September 20, 2017 the tenants seek the cost of emergency repairs, monetary compensation for claims related to “elder abuse” and “false accusations” by the landlord’s representatives, for an emergency repair order and for an order restriction the landlord’s right of entry.

By an amendment to the claim made September 27, the tenants seek to cancel a ten day Notice to End Tenancy for unpaid rent and a one month Notice to End Tenancy for cause dated and received September 26. It was agreed at hearing that the landlord has not issued a formal ten day Notice and so that portion of the claim is dismissed.

By an amendment to the claim made September 25, the tenants sought to add to or clarify the names of the original two respondents G.R. and D.R.

It is agreed that G.R. and D.R. do not exist. The tenancy agreement shows that the tenants’ landlord is a limited company. G.R. and D.R. are misdescribed references to Ms. G.C., a property manager working for the landlord, and Mr. D.S., who is apparently the president of the landlord real estate company that acts as a property manager. Accordingly, the style of cause has been amended to show the legal name of the landlord real estate company.

At the start of the hearing it was determined that all claims but for the tenants’ challenge to the one month Notice to End Tenancy for cause, were unrelated claims to that central and most immediate claim. All tenant claims but for the request to cancel the one month Notice were dismissed, with leave to immediately re-apply, pursuant to Rule 2.3 of the Rules of Procedure.

The Notice to End Tenancy for cause alleges: 1) the tenants have a) significantly interfered with or unreasonably disturbed another occupant or the landlord, or b) had seriously jeopardized the health or safety or lawful right of another occupant or the landlord, 2) that the tenants have engaged in illegal activity that has or is likely to jeopardize a lawful right or interest of the landlord or another occupant, and 3) that the tenants have knowingly given false information to a prospective tenant or purchaser of the rental unit.

All parties attended the hearing, the landlord by its representative Ms. G.C., and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call

witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that any of the grounds given in the Notice are valid?

Background and Evidence

The rental unit is a three bedroom townhouse. The tenancy started June 1, 2017 for a one year fixed term and after that on a month to month basis unless otherwise agreed between the parties. The monthly rent is \$1350.00, due on the first of each month in advance. The landlord holds a \$675.00 security deposit and a \$675.00 pet damage deposit.

The landlord's representative Ms. G.C. testifies that the tenants are interfering with her administration of the townhouse complex. She says that prior to these tenants coming into the complex, the existing tenants were slandering the landlord through social media.

It would appear that relations between the tenants and the landlord management company became so strained that in July one of the owners of the complex, Mr. B.F., attended and addressed the tenants.

Ms. G.C. relate a series of incidents that occurred in early September. The tenants' neighbour Ms. S.C. had contacted her to complain about bird seed coming over onto her property from the applicant tenants next door. She described the tenant Ms. V.S. as "crazy," alleging to have seen her jumping out of a car. Ms. V.S. is 81 years old.

Ms. G.C. spoke to the applicant tenants about it and they agreed to clean up the bird seed and remove a bird house.

According to Ms. G.C., the tenant Ms. V.S. then spoke to her neighbour Ms. S.C., who denied everything.

The tenant Ms. V.S. emailed Ms. G.C. and accused her of talking behind other peoples' backs and saying "nasty" things that are not true.

Perhaps wisely, perhaps not, Ms. G.C. decided to have a meeting with the applicant tenants to straighten out the disagreement. The meeting took place on September 7. Another tenant "C" who does work around the complex, was there with Ms. G.C.. The neighbour, Ms. S.C. was there. Ms. G.C. taped the meeting on her phone, with the knowledge of all in attendance.

The meeting did not go well. Ms. S.C. denied that she "complained" about the bird seed and became vocal about the fact that Ms. G.C. wasn't entitled to disclose her name as the complainant. Matter descended when Ms. V.S. stated that Ms. G.C. was "pretending to be an intelligent person." The recording of the meeting ended with Ms. V.S. clearly getting closer to Ms. G.C.'s phone and uttering

statements like: "I hope your fired," "stupid, stupid, woman," "you are causing havoc" and "nobody likes you in this complex." She is heard to describe Ms. G.C. as a "pit bull" and a "nitpicker."

After that, it would appear that the applicant tenants opened communications directly with Mr. B.F., one of the owners of the complex. It would appear that though Mr. B.F. was polite at first, he directed that all tenant communications should be to and with the landlord, the respondent realty company. Nevertheless, it appears that the tenants mailed some of the evidence intended to support their application directly to Mr. B.F..

The neighbour Ms. S.C. testified. It should be noted that she was present in the hearing and heard the testimony of Ms. G.C. The tenants were warned beforehand that normally witnesses are excluded from the hearing until they give evidence and that the weight given to the testimony of a witness could be affected by their hearing of prior testimony. With this warning in mind, the tenants chose to have Ms. S.C. stay during Ms. G.C.'s testimony, considering her presence to be necessary support for them.

Ms. S.C. admits bring Ms. G.C. over to show her the seeds from the tenants' yard but didn't authorize her to disclose her name to the tenants. She also testifies about an incident involving another tenant, the police and the police statement made by that tenant's son.

The tenant Mr. C.S. testifies that in his view all was going fine at the recorded meeting until Ms. G.C. bragged that she had a masters degree, thus presenting herself as somehow superior to them. He says everyone in the complex is "living in fear." He says the owner Mr. B.F. has represented himself as the real landlord, coming over to the complex and bringing ice cream for the children.

The tenant Ms. P.S. testifies that Ms. G.C. doesn't care about single moms living in the complex and that Ms. G.C. has made nine threats to evict other tenants. She thinks the landlord is evicting tenants so that higher rents can be charged to new tenants.

In response Ms. G.C. says that Mr. B.F. met with the tenants in July because tenants in the complex, through social media, had propagated a rumour that the owners were going to evict all the tenants and sell the units.

Analysis

The ending of a tenancy is a very serious matter. A landlord seeking to end a tenancy for cause will be required to strictly comply with the rules and procedure for doing so, as set out in the *Residential Tenancy Act* (the "*Act*"). While the standard of proof is on a balance of probabilities, cogent and convincing evidence is required in order to satisfy that standard.

In this case the landlord has cited five grounds for termination. Proof of any of the five justifies the ending of the tenancy (see s.47 of the *Act*).

1. Significantly Interfering With or Unreasonably Disturbing Another Occupant or the Landlord

Ms. G.C. did not particularize what of her evidence related to this ground. It may be assumed that it regards the tenants' alleged engagement in social media intending to undermine her or it may regard the

recorded meeting or it may regard the tenants' detour around the landlord property manager directly to the owner.

The evidence does not persuade me that the tenants have been engaged in social media in an effort to interfere with or unreasonably disturb the landlord, the realty company or its employee Ms. G.C. There is no direct evidence of any social media involvement by the tenants or of the tenants directly propagating known lies or perversions of the truth.

The events occurring at the recorded meeting were disturbing. If anyone can be said to have started the deterioration of the meeting it was clearly Ms. V.S. by insulting Ms. G.C. about her intelligence. After that, Ms. V.S.'s remarks were very inappropriate and, frankly, tinged with hate..

It should be said that Ms. V.S. had been misled into taking the side of Ms. S.C. It is clear that Ms. S.C. had contacted Ms. G.S. to express her dissatisfaction about the bird seed in her yard. That is, by definition, a complaint. It was disingenuous of Ms. S.C. to say otherwise. Ms. G.C.'s disclosure of Ms. S.C.'s complaint to the tenants was perhaps tactless, but, in my view, it would have been obvious to the tenants who it was who had been complaining about bird seed falling onto their property.

However, the remarks made by Ms. V.S. do not in my view constituted an interference or disturbance so severe as to warrant eviction. The meeting was called by Ms. G.C. for an airing of views and that is what she got, as insulting as those views were.

Regarding contact with Mr. B.F., the tenancy agreement makes clear that the tenants' landlord is the realty company and not the owners of the property. The agreement does not indicate, as some do, that the realty company is acting as agent for the owners. Legally then, the tenants have no particular right or obligation to correspond with the owners.

At the same time, it is and was clear that the realty company is and was acting as agent for the owners. In such a situation it is not unreasonable for tenants to seek to bypass a property manager to complain about that property manager directly to the owners. Up until the tenants were directly informed in writing to not contact the owners, it was apparent that the owners, at least Mr. B.F. were involved in the operation. Mr. B.F. attended at the premises representing himself as an owner; a person in authority. In various correspondence from the realty company, the owners were referred to and it was made known to the tenants that the owners' approval for things was being sought. Such correspondence would tend to indicate that the owners were taking an active role in the running of the complex.

When the tenants were informed in writing that they must no longer contact the owners, such contact should have stopped.

The fact that such correspondence may not have stopped and that the tenants continued to send the owner Mr. B.F. material pertinent to their application, is not a such a significant interference or unreasonable disturbance of the landlord as to justify the ending of this tenancy.

For these reasons, this ground for the Notice must fail.

2. Seriously Jeopardize the Health or Safety or Lawful Right of Another Occupant or the Landlord

Again, Ms. G.C. did not particularize what of her evidence related to this ground and I must assume that it is the health, safety or lawful right of the landlord that is alleged and that the same three arguments form its basis.

For the reasons stated under the prior ground's analysis, I find that the tenants' is not of a level justifying eviction.

Additionally, the recording of the meeting could indicate that Ms. V.S. approached Ms. G.C. in an aggressive or threatening manner. While the audio evidence confirms Ms. V.S.'s aggressive state of mind, I am not satisfied on a balance of probabilities that there was any physical threat. In any event, Ms. G.C. did not testify that she felt threatened by the eighty one year old woman's words or actions.

For these reasons, this ground for the Notice must also fail.

3. Tenant Engaged in Illegal Activity That Has or is Likely to Jeopardize a Lawful Right or Interest of Another Occupant or the Landlord.

Again, Ms. G.C. did not particularize what of her evidence related to this ground in the Notice. No particular "illegal" activity was alleged and on the evidence presented, no illegal activity was proved.

I dismiss this ground for the Notice.

4. Tenant Knowingly Gave False Information to Prospective Tenant or Purchaser of the Rental Unit.

Again, Ms. G.C. did not particularize what of her evidence related to this ground.

No prospective tenant or purchaser was identified in the evidence adduced during the hearing and there was insufficient evidence to prove that any general utterance, writing or publication by either tenant, false or otherwise, was given to a prospective tenant or purchaser.

This ground for the Notice must fail.

In result, the Notice to End Tenancy dated September 26, 2017 is hereby cancelled.

It would be prudent to note to the parties that while landlords and tenants benefit from a peaceful, harmonious relationship, a landlord is in business. It has some goals that take precedence over niceness or compassion for its tenants. For example: a landlord wants to ensure it receives its rents and receives them on time and if the rent is not received on time or is repeatedly late, a landlord is perfectly justified in taking steps to replace that tenant. A landlord wants to ensure its residential property is not damaged. It wants to ensure that tenants do not interfere with or disturb other tenants. Apropos this dispute, a landlord wants to ensure that if a tenancy agreement requires a tenant to obtain tenant's insurance, the tenant has in fact obtained that insurance.

The *Residential Tenancy Act*, is legislation intended to provide tenants with protection; to provide them with a form of security of tenure. Despite any "threats" a landlord can only evict a tenant by following the law set out in the *Act*. Any tenant given a Notice to End Tenancy is entitled to dispute it by making applications such as this one, at which a landlord will be called upon to prove just cause.

Conclusion

The tenants' application to cancel the Notice to End Tenancy dated September 26, 2017 is allowed. The Notice is hereby cancelled.

There is no request to recover any filing fee.

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: October 22, 2017

Residential Tenancy Branch