



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes CNC OLC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notices to End Tenancy for Cause (the Notice) pursuant to section 47; and,
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Three parties attended the hearing for the tenant; the tenant himself as well as two friends, C.S. and H.P. Three parties attended for the landlord; the building manager/caretaker, C.V., the assistant caretaker, M.D., and the general manager, K.K. All parties provided affirmed testimony and were given a full opportunity to be heard, to present evidence and to make submissions. Neither the landlord nor the tenant raised any issues with respect to service of the Notice of Hearing, or the documentary evidence each party was relying upon during the hearing. Both sides confirmed they had copies of each other's documentary evidence.

The tenant stated that when he applied for this hearing, there was only one Notice issued, and since he applied, the landlord has served him with another 1 Month Notice to End Tenancy for Cause. The tenant stated that he wishes to amend his application to include consideration of both 1 Month Notices (both Notices were provided and each party had copies). Both sides provided oral testimony in the hearing, as well as in evidence in written and documentary form.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

- Is the tenant entitled to have the landlord's 1-Month Notices to End Tenancy for Cause cancelled?
 - If not, is the landlord entitled to an Order of Possession?
- Is the tenant entitled to have an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62?

Background and Evidence

Documentary evidence shows that the first Notice was signed by the resident manager, C.V., on August 21, 2017. C.V. also indicated on the Notice that it was posted to the tenant's door on September 30, 2017. This Notice is missing an effective date was issued for Cause 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

During the hearing, the landlord clarified that the second Notice was issued because of the missing and wrong dates on the first Notice (missing effective date, and wrong date of service). The landlord testified that the correct date of service for the first Notice was August 21, 2017, the same day it was signed and filled out by C.V. The tenant acknowledged receipt of this Notice and filed an application to dispute it on August 24, 2017.

As per the second Notice to end tenancy for cause provided into evidence, C.V. issued it under the same ground as before (above). She posted it to the door of the rental unit on September 8, 2017, with an effective date of October 31, 2017. As per the Proof of Service document, service of this Notice was witnessed by a third party.

During the hearing, K.K. testified that the tenant has created many disruptions for the other people in the building. K.K. testified that there was an incident on July 27, 2017, where a guest of the tenant's was significantly disruptive as she was leaving, and intruded another occupant's suite in the building as she was leaving the tenant's unit. K.K. referred to a letter on page 7 of their evidence package. In this letter, the other occupant, M.P., complains about the tenant's guest intruding into her unit and described how the tenant's guest was yelling, and erratic, such that she had to call the police. In this letter, M.P. also complains about the tenant's other guests in the past, and that they are often under the influence of something.

K.K. further testified that on August 7, 2017, as per page 15 of his evidence package, another tenant in the building (living on the floor above), heard fighting, yelling, and banging coming from the tenant's unit. K.K. testified that on several different dates in August of 2017, the tenant was knocking on C.V.'s door (resident manager/caretaker) bugging her for different issues, including requests for things such as using the photo copy machine.

K.K. testified that the resident caretaker, C.V., is distressed over the situation and has continually written letters to the tenant regarding different things that concern her. K.K. pointed to a few of the letters in his documentary evidence, speaking to the most concerning points and disturbances. Most of the letters provided in the landlord's evidence are hand written notes from the building manager, documenting the tenant's actions. There are also a few letters from other tenants in the building.

Some of the letters from C.V. regarding the tenant specify that they were posted to his door, others not. Also, some of the letters from C.V. explain to the tenant that people are not spying on him, and that he needs to stop knocking on other people's doors, and involving them in the events. The letters also warn the tenant to make sure his guests use the proper entrance to the building, rather than use his patio entrance, as to not disturb neighbouring units.

K.K. testified that the tenant has been attending other units in the building, knocking on doors and speaking to them about the different incidents, as per the letters on page 25 and 26. Letters from the resident caretaker also indicate that the tenant refuses to abide by the office hours, and despite being told (in person and by letter) to only knock outside of business hours if it is an emergency, he keeps doing so.

The landlord provided documentary evidence, in the form of written letters, to show that the tenant has also threatened to sue people in the building, as specified in the letter from one of the other tenants, M.W.

The tenant provided multiple letters in support of this hearing. He stated the following: he has lived in the building for 18 years, and has had very few complaints until recently. He stated that the long term caretaker and manager died in March of 2017, and the new caretaker, C.V. has complained about him since she started, including allegations that he uses meth, threatens others, and lets his guests disturb others. The tenant stated that he has had to phone the police on the person, M.W., living in the unit next to him, because he has been spreading rumours about drug use, and spying on him. The tenant further stated that M.W. has attended other units in the building, who are all friends of the caretaker, C.V., to talk to them about him.

In the letter, the tenant further stated: on August 11, 2017, another one of the neighbours was intoxicated and was pounding on his door. Further, while he was talking to his neighbour about a reference letter, C.V. interrupted him and told him to leave M.W. (who lives in the unit next to his) alone. The tenant further stated that he got several letters from C.V. after this time telling him not to knock on doors. However, the tenant stated that the police and tenant advocacy groups have told him he is allowed to do this.

In the hearing, the tenant testified that on July 27, 2017, he had a friend come over. He provided a letter which elaborates on this. The letter stated that on July 27, 2017, at 7:32 pm, he got a call from Acacia Health Clinic to come and pick up his friend, who was in distress. The tenant stated that his guest stayed at his place for a few minutes, and after dropping off some clothes, she left at 7:50 pm. In the hearing, the tenant testified that he walked her out of the building and gave her bus fare, and she only returned the next morning to pick up her items. The tenant testified that he knows she could not have entered any other unit on July 27, 2017, as alleged, because he escorted her out of the building.

The tenant pointed to the documentary evidence (a letter from Acacia Health) which shows that on July 27, 2017, he picked up his friend at 7:32 pm, as discussed above. The tenant testified that any disturbance from July 27, 2017, was not from any guest of his. He also pointed out that, according to the landlord's evidence of the incident from July 27, 2017, regarding a woman intruding on another unit in the building, the incident occurred at 6 pm. He highlighted that he had not even picked up his friend and brought her back to his unit at that point.

The tenant had two parties, H.P. and C.S., attend the hearing to support his version of events, and to speak to his character. They are friends of the tenant and attest to him being a respectful person, who does not use drugs, as the landlord is alleging. C.S. testified, and reported in her letter, that she lives across from the tenant and has for 5 years. She stated that the entire time she has lived there, the tenant has been quiet and respectful, and someone who has few visitors. C.S. testified that management has recently become aggressive since learning that she supports the tenant, and have issued her a threat of eviction for something that didn't happen (feeding the birds).

The tenant provided several letters of reference to support his good character and conduct.

One of the parties for the landlord, M.D., stated that the tenant's behaviour and the adverse effects from his guests are impacting multiple other tenants, and people are afraid of the tenant.

Analysis

In the matter before me, the Landlord has the to prove that the reason in the Notice is valid.

First, I turn to the initial Notice issued by the landlord. I find it is missing an effective date and does not meet the form and content requirements under section 52(c) the *Act*. As such, I find this Notice is invalid and is hereby cancelled. With respect to the second Notice that was issued, I find it meets the form and

content requirements under section 52 of the *Act*. I note that it was posted to the door of the rental unit on September 8, 2017, with an effective date of October 31, 2017.

The Tenant has lived in the rental unit for around 18 years and there appears to be few issues with his, or his guests', conduct until recently. The new building manager/caretaker, C.V., took over management of the building in the spring of 2017, and has provided many letters, and documentation about her observations of the tenant's behavior. The landlord has provided me with copies of warning letters that were given to the tenant to: stop knocking on the doors of other units, stop allowing his guests to enter through his patio door, explain that he is responsible for the conduct of his guests, stop threatening to sue other tenants, and to warn him that some of the incidents that occurred were not acceptable.

The tenant feels he is being unfairly targeted by management and much of what they have documented is not accurate because much of the noise is actually from other tenants in the building. The tenant also alleges that there are a few tenants who are friends and family of the manager/caretaker, and they are working against him. Ultimately, I find it clear that the relationship between the tenant and a few of the other tenants in the building (and the management) has degraded over the last couple of months. Many of the letters, complaints, conversations, and subsequent fallout appear to be related to a couple of central incidents in late July and August.

I turn to the incident on July 27, 2017, as it appears to be central, and somewhat seminal, to the bulk of the landlord's claims against the tenant. I note that there is a written letter from another occupant in the building, M.P., detailing that she heard knocking at her door, and subsequently her unit was invaded by a guest of the tenant. M.P. stated in her letter that the intruder ran through her living room, and fled out of her patio door. M.P. further stated that the intruder came from the tenant's unit (#109).

The tenant has directly refuted this story, and says he had not even picked up his friend at the time the landlord indicated it happened in their incident report (which showed 6pm). The tenant testified that his friend came over briefly after 7:30 pm sometime and only stayed for a few minutes, and left after she dropped some clothes off at his place. The tenant provided a letter from a health clinic corroborating this time. The tenant also testified that when his friend left that evening, he walked her out, and she did not have an opportunity to intrude other units, as alleged.

After reviewing this matter, I find it unclear how the author of that letter, M.P., would have known with any degree of certainty, that the woman who invaded her unit, was in fact from the tenants unit, given that M.P. is unlikely to have seen where the intruder came from (the intruder allegedly knocked and then entered on her own). Further, the tenant has provided affirmed testimony and written evidence pointing to a different version of events. Ultimately, I do not find the evidence before me is sufficient to link that disturbance to the tenant, or his guests.

The landlord has also provided letters from other people in the building complaining of the tenant's conduct (threatening to sue them, making noise). One is undated and unsigned (letter about noise made from the tenant allegedly working on bikes) and I have placed little weight on it. Further, the tenant provided affirmed testimony to dispute that he has been working on bikes in his unit or that he has been making any such noises.

Another letter was from the tenant's neighbor, M.W., alleging that the tenant was going to sue him. However, in response to this allegation, the tenant provided affirmed testimony to say that he is being

defamed, harassed, and spied on, so he has considered lawsuits for defamation in order to protect himself. The landlord is also alleging that the tenant has threatened to sue others as well.

However, the tenant testifies that there are a group of other tenants that are friends with the management of the building, and are ganging up against him, making up rumors, calling him a drug addict, and improperly blaming him for noise and disturbances. The tenant also testified that he has seen this neighbor spying on him, and eavesdropping in a provocative manner. Although much of this evidence is disputed, it appears both parties share some responsibility for the outcome, involving threats of lawsuits. Ultimately, I do not find the landlord has met the onus to prove that the tenant caused this, as there is evidence that each side played a part in what occurred.

There was also a letter from S.B., who lives on the floor above, which alleges that on August 7, 2017, she heard a fight erupt downstairs, including yelling, screaming and banging. S.B. believes the noise was coming from the tenants unit. The tenant solemnly affirmed that this was not coming from his apartment. The tenant further testified that he has heard several other people in the building arguing and yelling at different times, in and around his unit. I acknowledge the letter from S.B. However, I find it unclear how she would be able to determine, with any degree of certainty, how the yelling, and fighting she heard was actually originating from the tenant's unit. Ultimately, I do not find the evidence sufficiently establishes that the tenant was the source of the alleged disturbance, given that she was a floor above, and the tenant directly refutes this claim.

The letter from H.W. from August 13, 2017, alleges that there was someone on the tenant's patio, who made a rude comment to her, and then climbed over the railing to leave. H.W. stated she doesn't enjoy sitting on her patio anymore. The tenant testified that this is not true and that his guests always use the main entrance, with the exception of when the intercom was not working properly.

There are also a couple of letters from two other tenants who alleged that the tenant has knocked on their doors trying to explain how he is not at fault for all of the disturbance and that he is looking to get references to support his innocence on these matters. The tenant testified that he is not harassing people, and is only trying to have conversations with people to help prove his innocence. Further, the tenant alleges that the manager/caretaker, C.V., has interrupted him, and disturbed him while he has been talking with people in the building. C.V. alleges that the tenant has knocked on her door inappropriately, often outside of business hours, and in a disrespectful way, although the tenant stated he has had good reasons for when he knocks on her door, including to report other tenant's behaviour, any issues he sees with building facilities, and in some cases to ask to use the photo copy machine.

In summary, it is clear that management of this rental building is clearly at odds with the tenant. However, the landlord has the onus to prove that there are sufficient grounds to issue the Notice to End Tenancy for Cause. In this situation, I find much of the landlord's evidence, consisting largely of handwritten notes is contradicted by the tenant's affirmed testimony, and written evidence. I find that many of the disturbances are insufficiently linked to the tenant, and are directly refuted, with an alternate and plausible explanation. In light of all this, I find the landlord has not sufficiently demonstrated that it is more likely than not that the tenant or his guests are responsible for the different complaints, lodged by others in the building.

I find that the landlord has not provided sufficient evidence to support the reason to end the tenancy; therefore, both Notices are cancelled.

The tenant's application is successful. I order the tenancy to continue until ended in accordance with the *Act*.

Further, I note that the tenant requested an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62. However, he did not provide sufficient testimony or direct me to documentary evidence relating to this request. This issue was raised during the hearing only in the context of the tenants' request for cancellation of the Notices. Accordingly, this aspect of the tenants' application is dismissed.

Conclusion

The Tenant's application is successful. The Notices are cancelled.

The tenancy will continue until ended in accordance with the *Act*.

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 11, 2017

Residential Tenancy Branch