



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC (Tenant's Application)
 OPC, ET (Landlord's Application)

Introduction

The hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution, filed August 4, 2017, he sought an Order canceling a 1 Month Notice to End Tenancy for Cause issued on July 31, 2017 (the "Notice"). In the Landlord's Application, filed September 22, 2017, they sought an Order of Possession based on the Notice, as well as an early end to tenancy pursuant to section 56(1) of the *Residential Tenancy Act*.

The hearing was conducted by teleconference on October 12, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession?

Background and Evidence

Residential Tenancy Branch Rules of Procedure 6.6 provides that a Landlord must prove the reason they wish to end a tenancy when the tenant applies to cancel a notice to end tenancy; accordingly, the Landlords presented their case first in the hearing before me.

The Landlord V.F., stated that approximately 20 years ago her uncle rented the rental unit to the Tenant. She stated that five to six years ago she and her husband took over the management of the property because her uncle was no longer able to.

V.F. stated that three months ago the property was listed for sale.

On the Landlord's Application for Dispute Resolution the Landlords wrote that they were seeking an Order of Possession because they alleged the Tenant had sexually harassed their realtor as well as slandered them to prospective buyers.

In evidence the Landlords provided a copy of an email sent by the Tenant to the realtor which the realtor found inappropriate. The email reads as follows:

....I've been thinking....and since you're who's
been crawling
around in my head, causing this thinking, I
thought you might
be able to help me figure out what's going on...
I keep seeing your face when it came into my
kitchen yesterday.
And there was something going on in your mind
that had nothing
to do with house-selling, but I couldn't tell what it
was.
There was this hint of a smile on your face that
has me curious.
The thing is: I keep seeing your face and
wondering about all these

feelings that happen when I do. Nice feelings,
but I can't quite
figure them out, can't define them.
What I'm hoping you can tell me, which might
help, is what's
behind that little smile that was on your lovely
face??
I'm thinking that maybe if we took a couple
minutes and just
sat down together, some answers might spring
up....would you
be willing to do that?
Or not...?
Would be much appreciated...

V.F. confirmed that there are nine rental units in the property in addition to an owner's suite on the top floor. V.F. stated that the realtor continues to show the rental property, but makes sure the Tenant is not around and does not show his suite.

V.F. also stated that she was informed by the realtor that the Tenant was making comments that would indicate they were "slumlords" to people coming to look at the building. Introduced in evidence was a copy of an email from a prospective buyer who indicated that she decided not to give consideration to purchasing the property based on her encounter with the Tenant.

On July 31, 2017 the Landlord personally served the Notice on the Tenant.

V.F. stated that her uncle was old and unfortunately did not maintain the property as needed; however, she claimed that since they took over management they have made significant repairs. V.F. stated that despite the Tenant's allegation, they have done the following:

- repaired the back stairs;
- replaced the roof;
- completely renovated and repaired five suites which were vacant including replacing counters, cabinetry, plumbing and flooring;

The Tenant testified as follows. He admitted to sending the email to the realtor. He stated that he wanted to talk to the realtor about her "overly flirtatious" behaviour and smiles as he interpreted them to mean she was interested in him. He stated that when she wrote back and said she wanted to keep their relationship professional, he did not pursue this further. The Tenant further stated that contrary to the Landlords' submissions, the realtor has been able to show his rental unit at least on a couple occasions and he has had discussions with her to ensure that she is able to lock up as he has left the unit to facilitate showings.

The Tenant further stated that he does not recall making the statements which are noted in the email from the prospective buyer. He also stated that he did not have any reason to denigrate the Landlords as they have "done a nice job" on the renovations, and as a result were able to raise the rent. He also stated that he has hoped the Landlords would sell the property as their relationship has deteriorated, such that he would like someone else to purchase the property so that he can have new Landlords. The Tenant further stated that he did not do any name calling, or do anything to discourage the sale, as he believes a sale would be to his benefit.

The Tenant further stated that the Landlord tried to evict him once before; he confirmed that a hearing occurred before the residential tenancy branch, and the Landlords were unsuccessful in ending the tenancy. He stated that he believes that they are exaggerating their concerns as they simply want to evict him, as well as other tenants who have been living there for a while and paying far less rent than the amount they can receive from the renovated units. He further stated that they haven't been friendly with him since their first attempt at an eviction failed.

The Tenant testified that despite the Landlords' renovations to other areas of the rental building, his shower has not been operational for years. He further stated that his rental unit has not been repaired which would be obvious to anyone viewing the property such that it would not be necessary for him to point this out to the prospective buyers.

The Tenant further stated that he wants to stay in the rental unit and can't afford to leave as he is in receipt of a small pension. Finally, he submitted that he does not believe that his email to the realtor represents sufficient grounds to evict him, as he feels that they are just exaggerating in their attempt to evict him.

In reply V.F. stated the Tenant also had a discussion with the realtor after the email. She confirmed that she was not there during this discussion and could only report what was said to her by the realtor.

V.F. also stated that previously other renters had expressed concerns about the Tenant's behaviour four years prior.

Analysis

Ending a tenancy is a significant request. The *Residential Tenancy Act* permits Landlords to end tenancies when specific criteria are met. When a Landlord wishes to end a tenancy for cause pursuant to section 47 of the *Act*, the Landlord bears the burden of proving the reasons cited in the Notice on a balance of probabilities.

In the case before me, the Landlords claimed the Tenant sexually harassed their realtor and made slanderous comments about the Landlords to prospective buyers. These incidents are cited as being the reasons for issuing the Notice and are further articulated on the Notice as follows:

- The Tenant or a person permitted on the residential property by the Tenant has
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; and ,
- The Tenant knowingly gave false information to a prospective Tenant or purchaser viewing the rental unit/site or property/park;

Neither the realtor, nor the prospective buyer, attended the hearing to testify. As such, the information provided by the Landlords regarding these incidents was, at best, hearsay. From an evidentiary standpoint, the Tenant's first hand testimonial evidence is afforded more weight than hearsay as the realtor and the prospective buyer were not present to speak to the contents of their emails and be subjected to cross examination.

The Landlords allege that the email sent by the Tenant to the realtor constitutes sexual harassment. That email was reproduced in its entirety previously in my Decision; and while the

email from the Tenant was apparently unwelcomed by the realtor, it does not, in my view constitute sexual harassment.

The Tenant testified that he interpreted the realtor's friendliness to be attraction. He further testified that when she informed him she was not interested he did not pursue her further. The Tenant confirmed that the realtor continues to show the rental building, and has shown his unit, contrary to the Landlords' allegations.

With respect to the application before me, I find the Landlords have failed to meet the burden of showing that the Tenant, in sending this email to the realtor, has *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant* as alleged on the Notice.

Further, I find the Landlord has failed to prove that the Tenant *knowingly gave false information to prospective purchaser or the rental unit or property* as alleged on the Notice. I accept the Tenant's evidence that his rental unit has not been updated, or repaired as has been the case for other units in the building. The Landlords testified that five of the nine units have been renovated, and conceded that the Tenant's unit had not been updated. Further, a review of the previous Decision (July 2014) indicates that the issue of the Tenant's shower leaking has not been resolved despite the fact he applied for an order for repair over three years ago. Further, in that Decision, the presiding Arbitrator found that the following improvements and repairs had been completed: "[t]he building has a new roof, new fire escape and new landings have been added. Four of the nine suites have already undergone renovation..." In the within hearing, over three years later, only one more unit had been renovated and there was no indication any repairs or improvements had occurred in terms of the Tenant's rental unit.

The prospective buyer did not attend the hearing to speak to her email, or to provide further context as to the conversation she says she had with the Tenant. The Tenant testified that he did not recall making such comments, and further submitted it would be contrary to his interests as he hopes the rental unit will be sold to others as his relationship with the Landlords had deteriorated after they were unsuccessful in evicting him in 2014. I accept the Tenant's evidence that an astute buyer would observe that his rental unit had not been updated as compared to other units in the building. I further find it likely that a conversation may have occurred between the Tenant and the prospective buyer as to the condition of his unit, and his feelings that it had not been given the necessary attention. While the Landlords are presumably offended the Tenant may have spoken negatively about them to the prospective buyer, I am unable to find that he gave *false information to a prospective buyer* as alleged in the Notice.

For the foregoing reasons, I grant the Tenant's request to cancel the Notice. The tenancy will continue until ended in accordance with the *Act*. The Landlords' application for an Order of Possession based on the Notice, as well as section 56 (early end to tenancy) are dismissed.

The parties are reminded of the following obligations.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

- 8** (1) Landlord's obligations:
- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
 - (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

Conclusion

The Tenant's Application is granted and the Notice is set aside. The Landlords' Application for an Order of Possession is dismissed. The tenancy shall 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 16, 2017

Residential Tenancy Branch