



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, OLC, MNDC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. The tenant also applied for a monetary order for compensation and for an order directing the landlord to comply with the *Act*.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves. As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Both parties provided extensive documentary evidence. All parties' testimonies and evidence have been considered in the making of this decision. As this matter was conducted over 76 minutes of hearing time, I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to compensation?

Background and Evidence

The tenant testified that she moved into the rental unit in March 2017. The current landlord purchased the unit in March 2018. The monthly rent is \$1,000.00 payable on the first of each month. The rental unit is located in a single storey building that houses a total of six rental units.

The landlord stated that at the time she purchased the rental unit in March 2018, the tenant had some undesirable visitors who conducted criminal activity in the garage at the rear of the tenant's unit, on the landlord's property. However the landlord stated that the garage has since been torn down and the main criminal does not visit the tenant any more. The landlord stated that some of that undesirable person's friends visit the tenant and there is one particular person (AA) who has caused some cause for concern for the other occupants of the building.

The landlord stated that AA threatened one of the landlord's other tenants with strangulation with a belt, in the presence of her children. However this interaction took place off the rental property at a community center, sometime in March 2018, in the absence of the tenant.

The landlord stated that AA has been seen on the landlord's property attempting to visit the tenant. The tenant testified that she has informed AA that he is not welcome in her home and she does not let him in. She stated that he suffers from mental health issues and she has called the police on him when he refuses to leave her front door. The tenant also filed copies of her text messages to the landlord informing the landlord that AA was on site on one occasion and that she had called the police to have him removed.

The landlord stated that AA causes noise disturbances at night, asks people for money, food, pop bottles and cigarettes and in general causes other occupants to fear for their safety. The landlord stated that she has received multiple verbal complaints from the other occupants. The landlord filed copies of two written complaints which are dated November 06, 2018 and November 11, 2018. The notice to end tenancy is dated October 06, 2018.

The landlord has served the tenant with three warning letters dated April 24, 2018, July 06, 2018 and September 24, 2018. The three letters mostly refer to the presence of AA on and off the property. The letter dated April 24, 2018 describes an incident that took place in March 2018. The letter dated July 06, 2018 describes an incident that took place on July 12, 2018 (after the letter was written) and also refers to two men outside the tenant's unit at 3am causing noise disturbances. The letter dated September 24, 2018 mentions AA and refers to "*a number of people who pose a threat*". The letter does not provide any specific details or descriptions of the incident or the people.

Upon review of the text messages between the two parties, I find that the landlord speaks of incidents and activities of people associated with the tenant but does not provide details of date, time, description of persons etc. The tenant's replies consistently request details so that she can follow up and take necessary action.

The tenant stated that she feels harassed by the landlord with threats of eviction, false complaints and calls made by the landlord to the government agency for child protection. The tenant also stated that the landlord discriminates against her guests based on their appearance and refers to them as “*street entrenched people*” and “*homeless male friends*”. In one communication the landlord describes the tenant’s visitors as “*appearance of living on the streets (neck tattoos disheveled appearance)*”. The tenant is claiming compensation in the amount of \$3,000.00 for the loss of quiet enjoyment.

On October 06, 2018, the landlord served the tenant with a notice to end tenancy for cause. The tenant disputed the notice in a timely manner. The reasons for the notice are

Tenant or person admitted on the property by the tenant has

- Significantly interfered with or unreasonably disturbed another occupant or the landlord
- Seriously jeopardized the health or safety or lawful right of the another occupant or the landlord

Tenant or a person admitted on the property by the tenant has engaged in illegal activity that has or is likely to:

- Adversely affect the quiet enjoyment, safety, security or physical well-being of another occupant
- Jeopardize the lawful right or interest of another occupant or the landlord

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged.

The main thrust of the landlord’s case is that she objects to the tenant’s guests. Apart from an encounter with AA on September 21, 2018, the landlord was unable to provide specific dates, times and description of problems associated with the activities of the tenant’s guests on the rental property. The landlord stated that AA mentioned that he was staying with the tenant for a few days. The majority of the landlord’s testimony consisted of incidents and criminal activity that occurred around March and April of 2018.

The tenant agrees that during the first part of the year there were multiple problems with her guests and since then she has taken steps to ensure that the problems do not recur. The tenant described an incident on July 04, 2018 when AA called her asking if he could visit her and she refused. Despite her refusal, AA came by. The tenant did not open the door, called the police and informed the landlord of the incident.

Based on the testimony of both parties and the documents filed into evidence, I find that the tenant has made efforts to ensure that AA does not visit her and that her guests do not cause problems for the other occupants. I accept the landlord's testimony that the other occupants of the rental property remain fearful based on the problems that occurred during the early part of 2018. The landlord stated that the notice was also based on the information received from AA that he was staying over at the tenant's rental unit for a few days. The tenant denied this and the landlord was unable to provide evidence to support AA's allegation.

I find that the tenant is not responsible for AA's actions outside the rental property. I am also satisfied that the tenant has not encouraged AA to visit her and has even called the police to escort him off the rental property.

I accept that the tenant took appropriate action after having been given a written warning and informed AA that he was not welcome to visit her. The landlord agreed that the criminal activity that took place at the start of 2018 has ceased and that the people associated with that activity are no longer guests of the tenant. However, the landlord was not able to provide any specific information on the activity of the tenant or her visitors that would justify a notice to end tenancy for cause. I am not satisfied that the actions of the tenant justify bringing this tenancy to an end. In the absence of sufficient information to support the reason for the notice to end tenancy I allow the tenant's application and set aside the landlord's notice to end tenancy dated October 06, 2018. As a result, the tenancy shall continue in accordance with its original terms.

Regarding the tenant's claim for compensation, I accept the tenant's testimony that the landlord discriminates against her visitors based on their appearance. The landlord's text messages clearly describe the tenant's visitors in a derogatory manner. The messages also threaten eviction. I accept the tenant's testimony that being a single parent of three children, threats of eviction and are very unsettling and cause anxiety.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy. Such interference might include intentionally removing or restricting services to the tenant.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed.

With regard to the tenant's monetary claim for compensation for the loss of quiet enjoyment, I have reviewed the submissions of both parties and I find that the relationship is stressful on both parties for different reasons. Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant did not provide compelling evidence to support her claim of compensation for harassment and loss of quiet enjoyment and therefore the tenant's claim for compensation is dismissed.

However the landlord is put on notice that if the landlord continues to threaten eviction without specific and justifiable cause, the tenant may make another claim for compensation.

The landlord would be wise to refrain from discriminating against the tenant's visitors based on their appearance and refrain from threatening eviction without sufficient cause. I find it timely to put the landlord on notice that, if such behaviours were to occur again in the future the record of these events would form part of the tenant's case should it again come before an Arbitrator, for consideration.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

The tenant's application for compensation is dismissed.

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: November 29, 2018

Residential Tenancy Branch