



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NELSON KIWANIS PROJECTS
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on August 22, 2019 (the "Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated August 09, 2019 (the "Notice").

The Tenant appeared at the hearing. The Tenant called the Witness during the hearing. The Agent for the Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions in this regard. The parties and Witness provided affirmed testimony.

The Agent confirmed the correct name of the Landlord which is reflected in the style of cause.

The Tenant submitted evidence prior to the hearing. The Landlord did not. I addressed service.

The Agent confirmed receipt of the hearing package and Tenant's evidence.

The Agent thought the Landlord had submitted evidence; however, I had not received evidence from the Landlord. The Tenant testified that she did not receive evidence from the Landlord. The Agent said he thought the evidence was served on the Tenant with the Notice. I explained to the Agent that the evidence had to be served again as evidence on this hearing. The Agent could not confirm that the evidence was served on the Tenant. The Tenant had submitted the documents served on her with the Notice and I have considered these. I did not allow the Landlord to re-submit evidence given I was not satisfied it was served on the Tenant.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the parties and Witness and all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

Background and Evidence

The parties agreed on the following. There is a written tenancy agreement between the Landlord and Tenant in relation to the rental unit. The tenancy started November 01, 2018 and is a month-to-month tenancy. Rent is \$450.00 per month due on the first day of each month.

The Notice was submitted as evidence. The grounds for the Notice are that the Tenant, or a person permitted on the property by the Tenant, has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Agent testified that the Notice was served on the Tenant by registered mail August 09, 2019. The Tenant testified that she received the Notice August 12, 2019 by registered mail.

The Agent testified as follows in relation to the grounds for the Notice. He received phone calls in May from another tenant and his doctor about conflict with the Tenant. He spoke to the Tenant about this. From May 10th to 15th, he received two complaints about the Tenant from other tenants, P.F. and S.D. He tried to resolve the issue. Things were quiet for a time. On July 02, 2019, he received a phone call about “antics” on July 01, 2019 when the Tenant was yelling, calling S.D. names and interrupted a third tenant from watering plants. On July 05, 2019, the Tenant approached him and asked if she was going to be evicted. He wanted to have a meeting with the parties involved to resolve the issue. The Tenant reacted aggressively and did not want to meet. He could not get a word in with the Tenant. Four other tenants want to move out because of the Tenant’s behaviour to others. He received two further calls on August 06, 2019 from P.F. and S.D.

The Agent further testified as follows. He has received written complaints from P.F., S.D. and a third tenant. Other tenants have mentioned an atmosphere of tension. There is a pattern of the Tenant causing “drama” in the building. The Tenant is affecting the quiet enjoyment of others. The Tenant goes outside and stares at people. He has witnessed the Tenant “go off the handle” on other occasions.

The Tenant testified as follows. She did not know what the Agent was talking about when he came to her May 15th about receiving two complaints from other tenants. She had previously had an uncomfortable encounter with S.D. and thought it was about that. In January, S.D. had yelled at her calling her names and swearing because she did not want to be friends with him. S.D. and P.F. have told her she is going to be evicted. S.D. calls her names, yells at her and chases her. S.D. constantly treats her badly. S.D. waits for her at the bus stop and follows her. It is her who is being abused by S.D. She never spoke to P.F. until after being served with the Notice.

The Tenant testified that the allegations of other tenants against her are not true and she has not done the things they say she has.

The Tenant called the Witness who testified about an incident a few months prior when he observed S.D. being verbally abusive towards the Tenant at a bus stop. The Witness testified that S.D.’s behaviour was terrifying. The Witness testified that the Tenant came behind him to hide from S.D. and said she wanted to be left alone. The Witness testified that the bus driver came out and told S.D. to calm down.

The Tenant submitted a signed letter from another tenant dated October 10, 2019. I find this difficult to read. I understand it to mention verbal abuse and aggressive behaviour by S.D. towards the Tenant.

As stated, the Tenant submitted the documents attached to the Notice. I have reviewed these. They include:

- A letter from P.F.’s doctor dated May 10, 2019 stating P.F. “is having some conflict with a neighbour” and asking the Agent to talk to the neighbour.
- A letter from P.F. dated May 14, 2019 stating that his right to quiet enjoyment is being violated because of something his friend told him the Tenant said about him. It also states that the Tenant stares at him when she sees him outside which bothers him and makes him feel scared to be outside of his place.

- An email from S.D. dated July 08, 2019 stating that he was confronted by the Tenant at a bus stop. It states that the Tenant insulted him and said he was a dead man. It states that the weekend included “all kinds of gestures and insults” from the Tenant.
- A letter from S.D. dated May 14, 2019 stating that his right to quiet enjoyment is being violated and stating as follows. His first interaction with the Tenant did not go well. Since then he has had “insults and bile thrown [his] way”. That the Tenant makes comments such as “everyone knows about you”. He dreads running into the Tenant.

I note that there is one further letter in the Tenant’s evidence which I cannot read.

Analysis

Based on the testimony of both parties, I accept that the Tenant received the Notice August 12, 2019. The Tenant filed the Application August 22, 2019, within the 10-day time limit to dispute the Notice as set out in section 47(4) of the *Residential Tenancy Act* (the “Act”).

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules of Procedure. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The Agent testified that the Tenant is disturbing other tenants in the building and that he has received numerous complaints about this. The Tenant denied the allegations and testified that it is other tenants who are disturbing her.

The Agent did not call the other tenants as witnesses to support his testimony or provide their account of the situation. I have considered the documentary evidence submitted by the Tenant which was provided to her by the Landlord with the Notice.

I am not satisfied based on the testimony of the Agent and documentary evidence that the Landlord has proven the grounds for the Notice.

The letter from P.F.’s doctor refers to conflict between P.F. and the Tenant without further detail. As well, the doctor would not have had personal knowledge of what occurred between P.F. and the Tenant. The doctor would only know what P.F. told them occurred.

In relation to the letter from P.F. dated May 14, 2019, I do not find the allegations in it serious. I do not find it reasonable to rely on something a friend told him the Tenant said as a basis for a breach of his right to quiet enjoyment. Nor do I find the Tenant staring at him to be a reasonable basis to allege a breach of his right to quiet enjoyment in the absence of some further evidence and explanation on this point.

I find the allegations set out in P.F.'s letter dated May 14, 2019 also cause me to question his basis for advising his doctor that there is conflict between him and the Tenant.

The only remaining relevant documentary evidence that I can read is from S.D. The Tenant acknowledged there is conflict between her and S.D., although the Tenant testified that it originates from S.D. The Tenant denied S.D.'s allegations. I am left to determine who is the cause of the issues between the Tenant and S.D. As stated, the Landlord did not call S.D. as a witness such that I could hear his version of events. I have no affirmed testimony or evidence before me from S.D. I do have affirmed testimony before me from the Tenant who denied S.D.'s allegations and testified that it is S.D. who is the cause of the issues. There was nothing about the Tenant's testimony that caused me to question her reliability or credibility. I also have affirmed testimony from the Witness before me which tends to support the Tenant's testimony that it is S.D. who is the cause of the issues between them, at least some of the time. Based on the evidence, I am not satisfied the Tenant has done the things alleged in S.D.'s email and letter and am not satisfied the Tenant is the cause of the issues between these two.

I believe the further letter submitted is from another tenant with a complaint about the Tenant. This letter is not clear enough for me to read properly. I therefore have not relied on it. The Landlord should have submitted a clear copy of this, or called this person as a witness, if the Landlord sought to rely on this evidence.

I acknowledge that the Agent testified that the Tenant reacted aggressively when he suggested a meeting between the tenants and that he has witnessed the Tenant "go off the handle" on other occasions. However, the Agent did not provide further details of these incidents such that I am satisfied these alone, or together with the other complaints, are sufficient to end the tenancy pursuant to the Notice.

Having considered all of the evidence before me, I am not satisfied based on the evidence that the Landlord has proven the grounds for the Notice. I do not find the evidence provided sufficient to prove the grounds for the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Application is granted. The Notice is 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 *Act*.

Dated: October 29, 2019

Residential Tenancy Branch