



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BENTALL GREEN OAK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code CNC, FF

Introduction

The tenants apply to cancel a one month Notice to End Tenancy for cause. The Notice alleges that the tenants (Mr. J.O.) significantly interfered with or unreasonably disturbed the landlord and that he seriously jeopardized the health or safety or lawful right of the landlord. Proof of either claim forms a lawful ground for eviction under s. 47 of the *Residential Tenancy Act* (the "Act").

All parties attended the hearing, the landlord by its agents, 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 evidence presented at this hearing establish either of the grounds cited in the Notice?

Background and Evidence

The rental unit is a studio apartment in a six floor, 50 unit apartment building. The tenancy started in September 2018. The current monthly rent is \$1733.00. The landlord holds a \$866.50 security deposit.

The Notice provides details of the cause as follows:

On 11/16/2019 at 8.15pm the resident of suite 401 approached the community manager in the elevator and started to video record her on his cell phone. She requested he stop recording her and exited the elevator proceeding to her office. The resident of suite 401 followed her to the management office while still recording, he became aggressive and tried to forcefully enter the office. She locked herself in the office. She reported the incident to the police (File #VA19/235677) The community manager no longer feels safe.

The community manager is Ms. O.B. who provided her written statement and testified. It is her evidence that on November 16 she rode up the elevator with Mr. J.O. (the tenants' rental unit is on the same floor as the office) and that he followed her to her office door (which is immediately beside the tenants' front door) with his phone out recording the interaction. She says he was "talking aggressively" and wanted to complain but she did not wish to engage with him. She says he "tried to follow me to the office." She went to close the office door and the tenant Mr. J.O. stuck his foot into the doorway, preventing her from closing it. He removed his foot and she closed and locked the door.

She says that over the next hour and a half the tenant came to the office door twice and tried to see into the office through a window. She says he could not see in but she could see his reflection off a different window.

She says that fearing for her safety she contacted a workmate who lives in the building to come and walk out with her.

Mr. J.O. testified denying he had threatened Ms. O.B. in any way or that he had given her cause to feel unsafe. He says that he is a small man and that Ms. O.B. is not only taller but heavier than he. He has been complaining to the landlord about its workmen constantly leave a ladder and garbage bags beside his apartment door. A complaint he felt the landlord had been ignoring.

On the day in question he was riding the elevator up from the parking lot. Ms. O.B. got on. He was on his phone. He says she told him to move a ladder he kept in his parking stall and that she said words to the effect that "you Mexicans think you can do anything you want." Because of that he says he started recording her on his phone. He says he did follow Ms. O.B. to her office door but it was because he was going to his apartment and his apartment door is about two feet from her office door.

He says he tried to download the video as evidence in this matter but it was “too heavy” which I take to mean “too large” for the government evidence site.

Mr. J.O. briefly reviewed the ongoing disputes over his and their ladders and a rent overcharge allegation.

He says he did not enter the landlord’s office but was standing in the doorway. He says Ms. O.B. closed the door on his foot. He did not move his foot to stop the door from closing. He then moved his foot and she closed the door. After that he says he came out and looked into the landlord’s office one time. He says they have seen each other since and she has shown no fear. Indeed, she served him with the Notice in question, with a man standing beside her.

Analysis

The ending of a tenancy is a very serious matter. While the evidentiary test is on a balance of probabilities, a landlord will be required to provide clear and cogent evidence to support the claim of cause.

In this case I consider that the tenant should have submitted the video of the incident. At the same time Ms. O.B. reduced the effect of her claim to a fear of Mr. J.O. by choosing to be the one to hand him the Notice to End Tenancy.

Both parties gave their evidence in a forthright and convincing manner. Each told a story consistent with the surrounding facts and I can find no basis upon which to chose one over the other.

Conclusion

The landlord has failed to prove the cause alleged in the Notice. The tenants’ application is allowed and the Notice to End Tenancy dated November 27, 2019 is hereby cancelled.

The tenants are entitled to recover the \$100.00 filing fee for this application. I authorize them to reduce their next rent due after receipt of this decision, in full satisfaction of the 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: January 31, 2020

Residential Tenancy Branch