



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC; MNDC; MNSD; OLC; ERP; RP; LRE; LAT; FF

Introduction

This is the Tenants' application to cancel a *1 Month Notice to End Tenancy for Cause* (the Notice); for compensation for damage or loss under the Act, regulation or tenancy agreement; for return of all or part of the pet damage deposit or security deposit; for an Order that the Landlord Comply with the Act, regulation or tenancy agreement; for an Order that the Landlord make emergency and regular repairs to the unit, site, or property; for an Order suspending or setting conditions of the Landlord's right to enter the rental unit; for an Order authorizing the Tenant to change the locks to the rental unit; and for recovery of the filing fee.

Both parties appeared at the hearing, gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

It was established that the Landlord received the Notice of Hearing documents, by registered mail, on September 13, 2011; that the Tenant provided the Landlord with copies of her documentary evidence, by courier, sent on September 26, 2011; and that the Landlord provided the Tenant with copies of her documentary evidence by express post at least five days prior to the Hearing date.

Preliminary Matters

The Tenant has applied for a number of Orders and for monetary relief which I find are not sufficiently related to the primary reason for her application, which is to cancel the Notice. Pursuant to the provisions of Rule 2.3 of the Residential Tenancy Branch Rules of Procedure, I dismiss the unrelated disputes in the Tenant's application **with leave to re-apply**.

Issue to be Decided

Should the Notice issued August 28, 2011, be cancelled?

Background and Evidence

This tenancy began on May 1, 2008. The Landlord issued the Notice on August 28, 2011. The Tenant received the Notice on August 28, 2011.

The Landlord has alleged the following reasons on the Notice for ending the tenancy:

Tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- Put the landlord's property at significant risk.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord and her agent CE gave the following testimony:

The Landlord testified that:

- she inherited this tenancy from the previous owner. She stated that when she purchased the rental property, she heard there were ongoing problems with the Tenant and therefore she took it upon herself to deal with the Tenant.
- the Tenant has someone else living at the rental unit and that she wanted him on the lease, but the Tenant insisted he is not living there.
- the Tenant has put a lock on an outside gate, which is in contravention of fire safety laws.
- the Tenant has falsely accused other tenants of drug dealing and has called the police twice to investigate her complaints.
- under the tenancy agreement, the Tenant is designated two parking spaces and that she currently has 4 vehicles, one of which is parked in visitor's parking. The Landlord has written to the Tenant requesting that she comply with the terms of the tenancy agreement, but the Tenant is not complying.
- a repairman went into the Tenant's home to repair a counter top and the Tenant refused to allow the Landlord into the rental unit to inspect the job and pay the repairman.
- nothing the Landlord does is good enough for the Tenant. The Tenant calls her names like "stupid" and her boyfriend is also rude.
- all of the other tenants in the rental property are happy.

The Landlord's agent CE testified that:

- the Tenant was provided with 24 hours written notice, but would not allow workmen to go into the yard or her home to make repairs. This put the Landlord's property at risk
- the RCMP asked the Tenant to remove Harley Davidson towels from a window, which she did but she moved them to another window.
- the Tenant harassed other tenants, trying to get them to sign a petition asking that the Landlord 's agent be removed from her position as property manager; asking that the Landlord 's agent stop telling tenants' children what to do; and stating that the Landlord's agent is a bad property manager.
- the Tenant called the police about her suspicions that the tenants in #5 were dealing drugs. The police investigated and found no indication of drugs at #5. About a week later, the Tenant phoned the police again and told them there was a drug deal going down. The police came and investigated again. The Tenants in #5 invited the police to come into their home and search it for drugs, which they did, but the police found none. The Tenant is harassing the tenants in #5. The Tenant told others that the Landlord 's agent was taking money under the table to allow the tenants in #5 to continue dealing drugs.
- on August 16, 2011, the Tenant and her boyfriend went to the Landlord's agent's home and started yelling obscenities at the Landlord's agent and harassing her.
- on August 17, 2011, the Landlord instructed the Tenant not to have any more dealings with the Landlord's agent because the Tenant was so rude to her. The Landlord MS told the Tenant to deal directly with her via e-mail only.
- the Tenant has more than two vehicles, contrary to the tenancy agreement. One of them was not licensed. On January 24, 2011, the Landlord's agent gave the Tenant written notice that she would have to correct the problem with her van within two weeks, and that if she wanted to park an additional vehicle on the rental property she would have to pay an additional \$20.00 per month. The Tenant asked for an extension of time and the Landlord gave her a month to comply. The Tenant finally got the vehicle licensed and gave the Landlord a copy of the insurance. The Tenant always parks one of her vehicles in visitor's parking.

The Tenant gave the following testimony:

- the Tenant's boyfriend sometimes stays with the Tenant, but does not live at the rental unit.
- the Tenant submitted that she has a right to notify the police if she believes there are drug deals going on in the neighbourhood. The Tenant spoke to the Landlord about her concerns about the drug dealing on August 16, 2011, and asked the Landlord to be discrete and not mention her name to the people in #5 because she feared for her and her children's safety. Later on that day, she

noticed the Landlord's agent talking to the people in #5 and got a dirty look from the tenant in #5. The Tenant assumed the Landlord's agent had told them that she had suspicions. The Tenant called the Landlord, who confirmed that she had told her agent.

- the Tenant has only two vehicles, a van and a car. The Landlord gave her a month to get insurance and she complied. The Tenant believes the third car the Landlord is referring to is her boyfriend's car. He parks quite often in the visitors parking. The Tenant cannot say for certain how many days a week her boyfriend stays with her, but it is probably 5 or 6 times.
- the Tenant is happy to have people come to the rental unit to make repairs. The Tenant submitted that the Landlord does not give the Tenant 24 hours notice, in writing. When the Landlord phones enough in advance she usually consents, but when the Landlord only gives her two hours notice, she does not consent.
- the Tenant's windows were not properly sealed and so she put up the Harley Davidson towels to conserve heat. The Tenant submitted that she should be able to put up whatever type of window coverings she chooses.
- the Tenant denies harassing other tenants. The Tenant talked to the Landlord about the Landlord's agent, but the Landlord would not believe the Tenant. The Tenant believes the Landlord's agent told the Landlord negative things about the Tenant. The Landlord asked for proof of the Landlord's agent's actions, so the Tenant went to see other tenants to ask if they would sign the petition. The other tenants let her into their homes voluntarily. She did not harass them. The Tenant submitted that the other tenants did not sign the petition because they are reluctant to cause problems in the rental property.
- the Landlord's agent is always spying on her.
- the Tenant denied suggesting that the Landlord's agent was taking money under the table from #5 so they could continue to sell drugs. The Tenant stated that the tenants in #5 told her that the Landlord's agent knits or crochets filters for their fish tank and that they pay her for this.
- The Tenant sent the Landlords rent for the month of October, and the cheque has been cashed.

Analysis

Although the parties accused each other of harassment, this Hearing dealt with a Notice to End Tenancy for Cause, and therefore was about the Tenant's actions. Therefore, I make no findings with respect to the Tenant's allegations of harassment against the Landlord or her agent.

In a situation where a tenant seeks to cancel a Notice to End Tenancy, the landlord is required to establish, on the balance of probabilities, that the tenancy should end for the reasons indicated on the Notice to End Tenancy.

During the Hearing, I explained to the parties that I would be considering the verbal testimony and the relevant documentary evidence provided when reaching my decision.

I find that there was insufficient evidence that the Tenant had breached a **material term** of the tenancy agreement that was not corrected **within a reasonable time after written notice to do so**. The written notices provided in evidence are vague. There is no direction in the notices that the Tenant or her boyfriend must refrain from parking in the visitors spot by a certain deadline, or that the Tenant must start paying an additional \$20.00 per month by a certain date. Therefore I do not find that the Tenant breached a material term of the tenancy agreement that was not corrected within reasonable time after written notice to do so.

With respect to the reason that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord, I have found the tenancy should end based on the following factors. In addition to the Landlord's and her agent's testimony, the Landlord provided a copy of an e-mail from the tenants in #5 dated August 20, 2011. The e-mail states, in part:

“Jim said can you please search my house so that I can clear my name once and for all, the officer agreed to. After the search of residence turned up nothing, the police said have a nice day and left.

Now we are relatively new to this complex but for the past month now we have been dealing with harassment and being picked on by [the Tenant], we have do nothing to deserve this and are not going to live like this. These accusations have made living here extremely uncomfortable. It is a landlords job to ensure comfortability and safety of the tenants. If this situation is not property dealt with we will be forced to take legal action, and file a complaint with the residential tenancy board.”

(reproduced as written)

The Landlord also provided a copy of a letter sent to the Tenant on August 17, 2011. In the letter, the Landlord states that she has probable cause to believe that the Tenant placed a defamatory Craigslist ad with respect to the rental unit, which was impeding her progress in renting a rental unit. A copy of the Craigslist ad was also provided in evidence, which states, in part:

“Anyone replying to ads on [rental property] please be informed:
STREET BUMS and GARBAGE PICKERS run rampant through the place
The DANCE CLUB across the street brings troubled teens to the area..
The DRUG DEALERS are back...
The PROPERTY OWNER is a SLUMLORD
The LANDLADY is a meddling B**ch, We call her the WARDEN...it’s worse than
living with your parents...
She goes out of her way to cause trouble for tenants, tells children what to do,
yet will not deal with any real issue.”

(reproduced as written)

The Tenant did not dispute this allegation during her testimony. The Tenant made submissions about drug dealers during the Hearing. The Tenant also complained that the Landlord’s agent was telling tenants’ children what to do. The Tenant stated that the Landlord does not make repairs to the rental property. I find on the balance of probabilities that the Tenant did publish the defamatory Craigslist ad with respect to an advertisement about another rental unit in the rental property.

I find that the Tenant has significantly interfered with the Landlord by interfering with her business and that the Landlord’s Notice is a valid notice. Furthermore, the Landlords have a responsibility to the other occupants under Section 28 of the Act to provide them with freedom from unreasonable disturbance. The Tenant’s calls to the police with respect to the tenants in #5 produced no evidence of drug dealing. Therefore, I uphold the Notice and I dismiss the Tenants’ application to cancel the Notice.

The Tenant has not been successful in her application to cancel the Notice and therefore is not entitled to recover the cost of the filing fee from the Landlord.

Based on the testimony of the parties, I am satisfied that the Tenant received the Notice on August 28, 2011 with an effective date of September 30, 2011; however the Tenant has paid to remain in the rental unit until October 31, 2011. Therefore I find that the Tenant must give the Landlord vacant possession of the rental unit by 1:00 p.m., October 31, 2011.

Conclusion

The Tenant’s applications to cancel the Notice and for recovery of the cost of the filing fee are dismissed **without leave to re-apply**. The remainder of the Tenant’s application is dismissed **with leave to re-apply**.

The Tenant must give vacant possession of the rental unit to the Landlord by **1:00 p.m., October 31, 2011**.

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 04, 2011.

Residential Tenancy Branch