Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, CNC, FF

Introduction

This hearing dealt with applications from the landlord and the tenants (the spelling of whose names I have revised in this decision to reflect the correct spelling as set out in their application) pursuant to the *Residential Tenancy Act* (the *Act*). The tenants applied to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47 of the *Act*. The landlord applied for an end to this tenancy on the basis of the 1 Month Notice and an Order of Possession pursuant to section 55 of the *Act*. Both parties applied to recover their filing fees for their applications from the other party.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenants confirmed that the landlord handed the male tenant (the tenant) the 1 Month Notice on December 21, 2011. The tenants also confirmed that the landlord handed the tenant a copy of her dispute resolution hearing package on January 4, 2012. The landlord confirmed that the tenant handed her a copy of the tenants' dispute resolution hearing package on December 28, 2011 between 5:00 and 6:00 p.m. I am satisfied that the parties served the above documents to one another in accordance with the *Act*.

The landlord testified that she had only received one written evidence package from the tenants. The tenants testified that they sent their most recent written evidence package to the landlord by registered mail on January 7, 2012. As this written evidence package would be deemed served to the landlord on the fifth day after its mailing, this evidence package would have been deemed served on the day of the hearing. As such, I have not considered the tenant's late submission of their most recent written evidence package which contains a few letters from tenants in the building and the tenant's own letters sent to the landlord after both parties applied for dispute resolution.

The tenants said that they had received written evidence from the landlord including a DVD + R disk recording that was submitted very late, two days before this hearing. The landlord said that this disk recorded a conversation held between one of the tenants in the tenants' rental building and the tenant. The landlord provided a written record of this conversation that allegedly occurred on January 1, 2012, the accuracy of which was

disputed by the tenant. This DVD was submitted well after the deadline for submitting evidence had ended. The relevance of this evidence of a conversation which was also submitted as written evidence is of little benefit to the matters before me. At the hearing, I advised the parties that I might not consider the contents of the disk submitted as evidence by the landlord due to the late provision of this evidence and the apparent lack of relevance to the issue at hand.

After the hearing, I attempted to access the landlord's disk using the Residential Tenancy Branch's (RTB's) equipment for listening to such evidence. The disk could not be accessed as it was recorded on a format that was incompatible with the RTB's equipment. The landlord provided no equipment whereby this evidence could be considered. For these reasons, I have not considered the contents of the landlord's DVD + R disk, which from the description provided by the landlord and the tenants would have had little bearing on the issues in dispute.

At the end of this hearing, the landlord asked that I issue an order requiring the tenants to issue a written apology to all of the tenants in this building for sending notes to the other tenants if her application to end this tenancy on the basis of her 1 Month Notice were dismissed and the tenancy were to continue.

Issues(s) to be Decided

Should the tenants' application to cancel the landlord's 1 Month Notice be allowed? If not, should the tenancy be ended on the basis of the landlord's 1 Month Notice and should the landlord be issued an Order of Possession? Are either of the parties entitled to recover their filing fees for their applications?

Background and Evidence

The male tenant initially moved into this rental property in another rental suite in this 40 suite rental building in 1991. The current tenancy for this rental unit including both tenants commenced on December 15, 2006. Monthly rent is currently $725.00, payable in advance on the first of each month. The landlord continues to hold the tenants' $350.00 security deposit paid in part in 1991 and on December 15, 2006.

The tenants entered into written evidence a copy of the landlord's 1 Month Notice requiring the tenants to end this tenancy by January 31, 2012 for the following reasons cited in that Notice:

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

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;…*

Tenant has engaged in illegal activity that has, or is likely to:

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

In her application for dispute resolution, the landlord described her reasons for issuing the 1 Month in the following terms:

> *Tenant stole fridge, then caused fear, confusion, threatened security in tenants and landlord. Jeopardized lawful right or interest in tenants and landlord. Tenant K is now claiming Landlord buy him another fridge. Long-running, tolerated bad actor! Straw that broke the camels back.*

The parties entered into written evidence considerable background to this tenancy, including written testimonials from both parties from tenants in this rental building intended to discredit the other party's application. None of these written statements were sworn affidavits and, as such, are given little weight in my decision. Some of the parties' written evidence was relevant to the matters before me; far too much of it was not, as it related to old disputes and grievances between the parties that were not included in the landlord's 1 Month Notice, the reason for this hearing.

Two other tenants in this building attended the hearing as witnesses called by the landlord. One tenant admitted that she moved into the building relatively recently and did not know the tenants personally. She attended to confirm that she was fearful that there might be a thief in the building and that someone was placing handwritten notes in mailboxes or under tenants' doors. Another tenant who was present during an argument between the female tenant and the landlord provided sworn testimony regarding that incident. He too did not know the tenants well.

In the landlord's written and oral evidence, the landlord advised that she called the police on December 16, 2011. She did so after she learned that the tenants had likely taken a 2001 fridge from the freezer room to replace a 1969 fridge that the tenants claimed the landlord had given to them when the landlord replaced that fridge with a new one for their rental unit. The landlord maintained that the 1969 fridge was never given to the tenants, although the landlord told them that they could use the old fridge until it was required by someone else in the building who needed a working fridge. She entered written evidence that the fridge compressor on this old fridge gave out eighteen months to two years ago and sat empty until she had it removed for recycling on December 12, 2011. A backup replacement fridge, a 2001 model was placed in the freezer room by the landlord for backup emergency use. The tenants then sent a note

asking what had happened to the fridge that they considered theirs in the freezer room in notes of December 13 and December 14. The landlord entered into written evidence a copy of the tenants' December 14, 2011 note which read as follows:

> *…You didn't respond to our note about the fridge from the freezer room! We used that fridge all the time and we need one. Looks like we have to claim the one in there right now.*

Although the parties agreed that the freezer was returned by the tenants on December 16, 2011 at the request of the police officer who responded to the landlord's call (and with the police officer's assistance), the landlord's evidence that there was illegal activity was very limited. She testified that a Police File # had been created for this incident. She said that she understood that the police were still contemplating laying charges, but as yet she was unaware of any charges having been laid. She also testified that she had not obtained a copy of the police report or any other document from the police or anyone else that would confirm her assertion that the tenants were involved in illegal activity.

The landlord also referred to photographs that she had submitted that she claimed "proved" that the female police officer who attended required the tenant to remove the "stolen fridge." She also said that she overhead the police officer refer to the fridge as a "stolen fridge" and, as a result, she claimed that this proved that the tenants were involved in illegal activity. The photographs the landlord referred to were faxed black and white photographs that showed two rectangles with the rest of the photograph completely black. The copies of these photographs and all of the landlord's other photographs were of such low quality that I can attach no weight to them. Six of these photographs are completely blacked out and show nothing whatsoever.

The landlord's claim that the tenants have significantly interfered with or unreasonably disturbed other tenants in the building and the landlord relies on the tenants' response to the following notice that the landlord placed in the main lobby of the building above tenant mailboxes dated December 16, 2011.

> *Notice Dec 16/11*
> *There is a THIEF in the building*
> *A Holdings and Management will <u>not</u> be responsible for anything stolen from freezer rm lockers or bike area. All belongings stored are at tenants own risk.*

The tenants entered undisputed evidence that this notice was left in the main lobby of this building for three days.

The tenants entered written evidence that they believed that this notice was directed at them and responded by delivering notes to tenants in the building as follows;

*Thief in the building?! If you want to know who it is call ***-***-**** (their phone number) or police. Ask for Cons. S (constable's name).*

Analysis

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications and my findings around each are set out below.

Analysis – Alleged Illegal Activity

As outlined above, two of the three reasons cited in the landlord's 1 Month Notice rely on the landlord's assertion that the tenants were involved in some form of illegal activity. The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offence under the **Criminal Code**. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the Dispute Resolution Officer and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

When I asked the landlord to identify the alleged "illegal activity", the landlord responded that the tenants were thieves and that they had stolen a used fridge from the common "freezer room" of this rental building. At the hearing, I advised the parties that the landlord's assertions that the tenant was a thief and the other evidence presented by the landlord did not demonstrate that there was cause to end this tenancy for illegal activity. Rather, it seems apparent that there was a dispute between the parties that appears to have been resolved on December 16, 2011 when the tenant assisted in returning the fridge to the freezer room of this building. The landlord produced no evidence that charges have been laid or that there was any determination that the

tenants were involved in illegal activity. I dismiss the landlord's application for an end to this tenancy on the basis of illegal activity without leave to reapply.

Analysis - Alleged Significant Interference with or Unreasonable Disturbance of Another Occupant or the Landlord

The final reason for the landlord's application to end this tenancy for cause was based on the landlord's claim that the tenants have significantly interfered with and unreasonably disturbed another occupant of this rental building or the landlord. The landlord maintained in her application for dispute resolution and her written evidence that the incident surrounding the used fridge in the freezer room has been the "straw that broke the camel's back." In her application for dispute resolution, the landlord noted that there have been "long-running" issues involving these tenants. According to the landlord's written evidence and oral testimony from the parties, the landlord admitted that she had "tolerated" the tenants' previous actions and behaviours and did not issue a 1 Month Notice until after the dispute regarding used fridges in the freezer room had taken its course. Although both parties attempted in their oral and written evidence to ensnare consideration of their applications in previous incidents, I do not consider any of these previous issues, most of which occurred some time ago, of any relevance to their respective applications before me. Rather, the issue is whether or not the tenants' recent behaviours and actions that the landlord admitted prompted her to issue the 1 Month Notice have significantly interfered with or unreasonably disturbed another occupant of this rental building or the landlord.

In the days following the landlord's placement of notices in the building and the tenants' delivery of notes to other tenants, a number of tenants who were interested in learning more about these curious sounding notices called the tenants and the landlord. As the date for this hearing neared and the parties attempted to build evidence to support their positions, both parties appear to have undertaken their own campaigns within this building to garner support from tenants. I give little regard to the petitions and letters of support and concern introduced as written evidence by the parties. None of these statements are sworn affidavits. As was noted by the landlord regarding the tenants' signed petition, the circumstances by which signatures were obtained by the tenants may have been in response to perceived pressuring tactics having been applied by the tenants. I agree with the landlord's observations in this regard. I have similar concerns regarding statements introduced by the landlord from tenants worried about notices that suddenly started appearing in the main lobby and in notes in their mailboxes or under their doors.

The landlord testified that the tenants' placement of notes under the doors of the other tenants has disrupted and frightened tenants throughout the building. She maintained

that these actions by the tenants have significantly interfered with the quiet enjoyment of the premises by tenants in the other 40 suites in this building. More specifically, the landlord testified that the tenants' actions following the fridge incident have affected and "jeopardized" the landlord's business. In her final summation, the landlord stated that the tenants' actions have not been conducive to the landlord's attempts to operate her business as a landlord.

In addition to the landlord's written evidence, the landlord produced one tenant who testified at the hearing that she found it frightening that someone had placed a note under her door late at night regarding alleged thievery in her building. She testified that she is a single woman who lives alone and was "very shaken" by notes placed under her door and in the public area of her building about a "thief." However, this woman admitted under questioning by the female tenant that she moved into this building in July 2011, does not know anything about the tenants, and did not know who wrote any of the notes that worried her.

While I do not question this witnesses' sincerity, I find her concerns about notes being placed in public places and under her door provided little support to the landlord's claim that this tenancy should be ended because of the tenants' alleged significant interference and unreasonable disturbance of other tenants in their building.

The landlord also maintained that the female tenant's confrontation with the landlord following the police-assisted return of the fridge to the freezer room on December 17, 2011 warranted the issuance of the 1 Month Notice. She testified that the female tenant "got in my face" and was very angry and disruptive when the landlord and two other tenants in the building were moving some of the items in the freezer room. She said that the female tenant made "irate accusations" and that she kept pressing forward physically until one of the other tenants, the landlord's male witness at this hearing, positioned himself so as to deter the female tenant from physically contacting the landlord. This witness testified that the female tenant displayed irrational and "a bit erratic behaviour" in accusing the landlord of stealing the tenant's fridge from the freezer room. The landlord and the male witness agreed that the female tenant did not physically contact the landlord nor did she attempt to strike the landlord. Neither the landlord nor the male witness identified any specific threat uttered by the female tenant in this incident. The police were not called as a result of this incident. Although the female tenant admitted that she confronted the landlord on December 17, 2011 about the fridge incident, she denied having demonstrated threatening behavior towards the landlord.

The male witness also testified that he received a note under his door issued by the tenants. He said that called the tenants and the male tenant engaged in what appears to have been a limited conversation in which it became apparent that the tenants were involved in a dispute with the landlord about who had taken whose belongings and who was the actual "thief." I find this oral testimony and similar written evidence entered by the landlord regarding this interaction between the tenant and the male witness yielded little support to the landlord's claim that the tenancy should be ended for cause.

I find little substance to the landlord's application to end this tenancy for cause on the basis that the tenants have significantly interfered with or unreasonably disturbed other tenants in the building or the landlord. I find that neither the landlord's claim that she felt threatened when the female tenant confronted her on December 17, 2011, nor the tenants' communications with other tenants in this building since the landlord's posting of her public notice meet the standard required to end a tenancy for cause. There is insufficient evidence that the tenants have exhibited threatening behavior against anyone in this building, including the landlord. I dismiss the landlord's application for an end to this tenancy without leave to reapply as I do not find that the landlord has demonstrated that the tenants have significantly interfered with or unreasonably disturbed other occupants of the building or the landlord.

In making this finding, I have no doubt that the landlord finds this dispute with the tenants troublesome and that the landlord is worried that this dispute will have an effect on her business as a landlord. As outlined above, the *Act* provides a lengthy set of possible reasons that a landlord can identify as grounds for seeking a 1 Month Notice. These reasons set out in section 47 of the *Act* do not authorize a landlord to end a tenancy because a landlord finds a tenant troublesome or because a landlord feels that a tenant is causing problems for them with other tenants.

While the landlord may not agree with the tactics used by the tenants to alert other tenants to their perspective on the dispute between the landlord and the tenants, I find that it was the landlord and not the tenants who first placed a public notice to tenants about this matter. At the hearing, I questioned the landlord as to why she issued the alarming notice to tenants above the mailboxes that acted as a catalyst to the airing of this dispute throughout this building. The landlord maintained that she did so to protect the landlord from issues of liability should other possessions in the freezer room, lockers or bike room go missing. While it is certainly her prerogative as a landlord to post notices of her choice in public areas to tenants, this is a business decision that she made at the risk of upsetting her tenants. The landlord did not identify any legal right under the residential tenancy agreement governing this tenancy or the *Act* that would enable her to prevent those who feel aggrieved by a public notice she posted from

providing their perspective to others as long as they do so in a way that does not offend their residential tenancy agreement. I am unaware of any provision in the residential tenancy agreement or the *Act* that gives the landlord the right to monitor and control correspondence exchanged between tenants in the building.

The escalation of this matter into a "choosing of sides" between tenants in this building has not served the interests of anyone in this building. The dispute between the parties over the ownership of a 1969 vintage fridge whose life expectancy has long expired should not be the grounds for engaging in behaviours that require police to attend and criminal charges to be contemplated. The return of the 2001 fridge to the freezer room by the tenants should have ended this matter. Both parties bear responsibility for escalating this matter to the point where the landlord sought an end to this tenancy. Unless criminal charges are laid, I strongly encourage the parties to put this matter behind them in this ongoing tenancy and promote a return to a peaceful atmosphere in this rental building.

Landlord's Oral Request for an Order Requiring a Written Apology from the Tenants

I have also considered the landlord's oral request to obtain an order requiring the tenants to issue a written apology to the tenants if this tenancy were to continue. I see no need to issue such an order to the tenants. If the landlord believes that an apology needs to be issued to other tenants to set their minds at ease regarding potential thieves within the building, the landlord may wish to issue one herself as these initial worries seem to have arisen from her own decision to post a public notice to tenants. If she is interested in calming the nerves of her other tenants and in returning to what has apparently been a relatively tranquil building, it may very well be in the best interests of the landlord's business for the landlord to post some sort of notice that assures the tenants that the past concerns have been resolved.

As the tenants have been successful in their application and the landlord has not, I allow the tenants to recover their filing for their application from the landlord. To accomplish this, I order the tenants to reduce their next scheduled monthly rental payment by $50.00.

Conclusion

I dismiss the landlord's application in its entirety without leave to reapply. I allow the tenants' application to cancel the landlord's 1 Month Notice. The effect of these decisions is that the tenancy continues.

I find that the tenants are entitled to recover their $50.00 filing fee for their application from the landlords. I order the tenants to reduce their next scheduled monthly rental payment by $50.00 to implement this decision.

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 16, 2012

Residential Tenancy Branch