Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC ERP RP FF

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution under the *Residential Tenancy Act (*the *"Act"*) to cancel a 1 Month Notice to End Tenancy for Cause; to order the landlord to make emergency repairs for health or safety reasons; to order the landlord to make repairs to the unit, site or property; and to recover the filing fee.

Both parties were served with Notice of the Hearing in accordance with the *Act.* The tenant testified that he amended his monetary claim on June 12, 2012 and served the landlord on June 13, 2012 which extended the time for the landlord to submit evidence in response to the amended monetary claim of the tenant.

Evidence packages of both parties were considered. Following a detailed review of service dates, the evidence packages of both parties were deemed admissible.

Preliminary Matter

The tenant indicated several matters of dispute on his application and confirmed that the main issue to consider during the hearing was the application to cancel the 1 Month Notice to End Tenancy For Cause (the "Notice"). For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will consider the tenant's application to cancel the Notice and to recover the filing fee. I dismiss the remainder of the tenant's application with leave to reapply.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- Should the tenant recover the filing fee?

Background and Evidence

The written tenancy agreement was submitted as documentary evidence prior to the hearing. The tenancy agreement indicates that the tenancy began on February 7, 2007.

The tenant was served with a 1 Month Notice to End Tenancy for Cause (the "Notice") on May 30, 2012. The tenant applied for dispute resolution on June 1, 2012. The landlord indicates on the Notice that the tenant has seriously jeopardized the health or safety of lawful right of another occupant or landlord; and has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Notice was submitted as documentary evidence prior to the hearing. Witness NS, an agent for the landlord, affirmed that she served the Notice on the tenant personally on May 30, 2012. The tenant disputed the testimony of witness NS, stating that the Notice was slipped under his door and that he saw the Notice either on May 30 or May 31, 2012. The Notice indicates an effective date of June 30, 2012.

The landlord provided a brief history of the relationship between the tenant, the caretakers for the landlord and the landlord over the past five years. The landlord also provided a reference to a prior Decision of an arbitrator made on November 18, 2011 with respect to the tenant's claim for compensation.

The landlord testified that despite the tenant's previous application being dismissed, the tenant continued to complain about the same issues. He describes the tenant's behaviour as harassing. The landlord stated that as an owner, he is entitled to manage the property and has the right not be abused or threatened. The landlord testified that his agents, the resident caretakers NS and SC, who reside in the same building as the tenant, should not be harassed or threatened by the tenant.

The landlord affirmed that in his opinion, the actions of the tenant have been gradually escalating to the point where the tenant berated caretaker SC and allegedly lunged at him which caused SC to be afraid of the tenant and concerned for his safety.

Caretaker SC provided affirmed testimony that on May 19, 2012, the tenant asked him about repairs to the facia board. When SC responded to the tenant that he was unsure of when the landlord was intending to repair the facia board, he alleged that the tenant eventually became angry and moved from about 5 or 6 feet away, to quickly moving within about 1 foot of SC. According to SC, the tenant began yelling at him. SC asked permission to repeat the profanity used by the tenant and when asked to repeat it during the hearing, he said the tenant stated “you f***ing listen to me. You and (caretaker NS) are a**holes. Look for another job. You don’t know what you are doing...”. When SC was asked if he was afraid of the tenant, he replied, “Yes, at the time...I didn’t feel comfortable and thought I might get hit.”

The tenant disputed the testimony of the landlord and the witnesses. When the tenant was provided the opportunity to cross-examine caretaker SC, he asked him to repeat their conversation. I intervened and advised SC that he was not required to repeat the conversation again. The tenant had no questions for SC and stated he was shocked at the testimony of SC.

The tenant referred to a character reference letter from neighbour EE dated June 4, 2012. That letter has been reviewed in the documentary evidence provided. The landlord responded to the letter by stating he has only met EE on two occasions and has had only one or two sentence conversations with her and was polite on both occasions. On one occasion, the landlord asked EE to write him a letter regarding using an extension cord to her car in the parking area and he provided a written response to that letter. The landlord affirmed that that was his only written communication with EE, so is surprised that she would write a negative letter about him.

The tenant portrayed himself during the hearing as a calm person who was respectful to the caretakers and the landlord. The landlord and the witness caretakers provided a different impression of the tenant. The landlord used words such as obsessive, threatening and relentless.

The landlord was asked to describe the two areas of the Notice which indicate:

- The tenant has seriously jeopardized the health or safety of lawful right of another occupant or landlord; and
- The tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord stated that on May 19, 2012, when caretaker SC was approached and allegedly threatened by the tenant, he followed up with a letter dated May 20, 2012. In the letter, the landlord referred to the May 19, 2012 incident described above and

clarified for the tenant that he may be rude to an extent without reaction, however the landlord will not tolerate the tenant's discriminatory behaviour without reaction and when the tenant threatens physical violence to his manager, he must take action. In the letter, the landlord indicates that he will be following up with a notice to end tenancy as a result. The landlord made reference to section 17 regarding of the tenancy agreement, which governs conduct.

The tenant denies making any threatening gestures or movements towards the caretakers. The tenant states that he was asking about repairs to the building and having a conversation with the caretaker. The tenant is requesting that the Notice be cancelled and is seeking the return of his filing fee.

Both parties provided extensive evidence packages, including but not limited to, correspondence and photos. The evidence packages of both parties have been reviewed for consideration in my Decision.

Analysis

Based on the documentary evidence and oral testimony of the parties and on a balance of probabilities, I find the following.

Breach of material term – The landlord referred to section 17 of the tenancy agreement which states:

> 17. **CONDUCT.** In order to promote the safety, welfare, enjoyment and comfort of other occupants and tenants of the residential property, the tenant or the tenant's guest must not disturb, harass, or annoy another occupant of the residential property, the landlord or a neighbour. In addition, noise or behaviour, which in the reasonable opinion of the landlord may disturb the comfort or any occupant of the residential property or other person, must not be made by the tenant or the tenant's guest, nor must any noise be repeated or persisted after a request to discontinue such noise or behaviour has been made by the landlord. The tenant or the tenant's guest must not cause or allow loud conversation or noise to disturb the quiet enjoyment of another occupant of the residential property or other person at any time, and in particular between the hours of 10:00 p.m. and 9:00 a.m.

Section 47(1)(h) of the *Act* states:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

I find that pursuant to section 47(1)(h)(ii), the landlord did not provide reasonable time to give the tenant an opportunity to correct the situation. The landlord indicated to the tenant that based on the incident on May 19, 2012, he would be issuing the tenant the Notice. As a result of the above, **I dismiss the claim of breach of a material term on the Notice.**

Tenant seriously jeopardizing the health or safety or lawful right of another occupant or landlord – I find that on the balance of probabilities, and considering the oral testimony, documentary evidence and the testimony of the witnesses, I accept that the caretaker SC did fear the tenant based on the tenant's actions and statements towards SC on May 19, 2012. The caretakers are occupants of the building, and afforded the same rights as other tenants to be free from harassment and threatening behaviour. I reject the tenant's testimony as I found the tenant to be minimizing his actions and during cross-examination of caretaker SC, the tenant badgered the witness by asking SC to repeat his testimony. I subsequently intervened and advised the witness that he was not required to repeat his testimony. As a result, I accept the testimony of the landlord and witnesses and, **I find the tenant has seriously jeopardized the health and safety of lawful right of another occupant or the landlord and dismiss the tenant's application to cancel the Notice.**

I afford no weight to the letter from EE in my Decision. According to the landlord, EE was advised to stop using an extension cord in the parking area and as a result, the letter may have been written as a retaliatory gesture towards the landlord.

I afford no weight to the prior Decision referred to by the landlord as each Decision is made based on the merits of the case before the Dispute Resolution Officer. Accordingly, my Decision does not consider the result of the tenant's previous application for dispute resolution.

Order of Possession – I find the tenant was served in fact with the Notice on or before May 31, 2012 and filed this application on June 1, 2012. I find that the landlord's 1 Month Notice To End Tenancy for Cause to be valid. The effective date on the Notice is

June 30, 2012. **I, therefore, grant the landlord an order of possession effective June 30, 2012 at 1:00 p.m.**

Filing fee – As the tenant was not successful in his application, I do not grant the recovery of the filing fee**.**

Conclusion

I dismiss the tenant's application to cancel the Notice.

I do not grant the tenant the recovery of the filing fee.

I find that the landlord's Notice is valid as described above, and grant an order of possession effective **June 30, 2012 at 1:00 p.m.** This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 25, 2012

Residential Tenancy Branch