Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Murray Hill Developments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, MNSD, OLC, ERP, RR, RPP, LRE, AAT, LAT, RR, OP, FF

Introduction

The tenant applied for an order pursuant to section 47(4) of the Residential Tenancy Act to set aside a Notice to End a Residential Tenancy for Cause dated September 24, 2013 setting the end of tenancy for October 31, 2013. The tenant also brought numerous other applications including but not limited to: for compensation; to reduce the rent; make repairs; change the locks; limit access to her suite; return her property, and return her security deposit. The landlords applied for an Order for Possession pursuant to the same Notice to End the Tenancy dated September 24, 2013. The tenant, landlord's agent, witnesses and landlord's counsel attended the hearing.

In the course of this proceeding and upon review of the tenant's application, I have determined that I will not deal with all the dispute issues the tenant has placed on her application. 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 deal with the tenant's request to set aside or cancel the landlord's Notice to End Tenancy for Cause. Pursuant to Rule 2.3 of the Rules of Procedure I have dismissed the balance of the tenant's claims with liberty to re-apply at a later date if they are still relevant.

The parties agreed that many unnecessary parties were named as landlords, consented to their deletion and to the amendment of the style of cause. The style of cause herein reflects those changes.

Service of the applications was admitted by the parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the tenant entitled to an Order canceling the Notice to End the Tenancy or are the landlords entitled to an Order for Possession?

Background and Evidence

The landlords' resident manager J.K. testified that the six month fixed term tenancy began on August 1, 2013 with rent in the amount of $ 870.00. J.K. testified that early in the tenancy the tenant posted on her door and mailbox notices accusing others of interfering with her mail and inviting other tenants to call the police. The landlords' agent referred to some letters from the tenant prior to September 24, 2013 making unreasonable demands, complaints about other tenants, and alleged security breaches in the building. J.K. testified that the tenant defaced the landlords' public notices with derogatory annotations or removed them altogether. The tenant also wrote to the landlords complaining about J.K. in August. The tenant gave her notice to end the tenancy in August because of these complaints, and then later withdrew it. In her withdrawal letter she stated that J.K. needed anger management training. The tenant also complained that other tenants were smoking at the 711 near her unit. In August the tenant sent a letter to the landlord J.K. warning her that the "A.G. would get a letter about her gun threatening." The tenant directed several of her letters to the corporate office of the landlord, the landlords' board of directors and the landlords' lawyer's office. Many of the tenant's annotations to the notices and her letters themselves contained references to well-known former or current politicians and laws or statutes such as the Criminal Code or the Charter of Rights.

J.K. testified that shortly after moving in, the tenant made a request to change her locks and to have a deadbolt installed. J.K. testified that she advised the tenant the locks were changed at the commencement of the tenancy and that that management refused to permit the tenant to install a deadbolt. J.K. testified that shortly after that exchange in the middle of September 2013 the tenant posted several letters, photos and documents on her door. One was a defaced likeness of J.K's dog, others had derogatory remarks about how dictatorial J.K. and management are, and that they hated the elderly and hearing impaired individuals. One made reference to "911" the September 11th attacks. Another annotation stated "don't call J.K a witch bitch." On one of the landlord's notices posted as part of the display on her door the tenant wrote "this is what Hitler, Stalin and Putin do." J.K. testified that she was very offended by the tenant's conduct and was very hurt that someone could hate her that much. She testified that, as a result of the tenant's conduct, she is so upset that she dreads coming to work each day.

D.B. another tenant testified that she received a letter from the tenant dated October 17, 2013 addressed to "D. The Obese". That note was an annotated copy of D.B.'s letter to the landlord complaining about the tenant's display on her door. The annotations advised D.B. to lose weight, of the Charter of Rights, that D.B. has committed slander,

that the landlord went into her mailbox removing lawful mail, and so on. D.B. testified that on another occasion in November at the 711store the tenant approached her and asked if she made any more complaints against her and lunged at her. D.B. testified that as a result of these exchanges she will not leave the building unaccompanied, will only use the elevator, and is uncomfortable doing her laundry. She felt threatened and is considering ending her tenancy.

K.S. another tenant testified that he wrote to management, complaining about the tenant's display on her door and that he received a note from the tenant in October in retaliation. That note was prefaced with "called your employer." The rest of the note apparently refuted K.S.'s complaints that the display left marks on the tenant's door. K.S. testified that he was concerned that the tenant contacted his employer as he wished to retain his employment. He denied any other contact with the tenant and when asked, testified he could not recall ever making any derogatory remarks to the tenant.

J.K. testified that other tenants would not testify but told her they were considering not renewing their tenancy. The landlord submitted other anonymous statements complaining of the tenant's conduct. The tenant has a right to confront any evidence against her pursuant to the principles of natural justice, and I have therefore not considered such evidence.

The landlords submitted compact disks and transcripts of numerous voice messages left by the tenant at the landlord's legal counsel's office commencing in September through the beginning of November 2013. Some are very lengthy and were left late at night. They are derogatory, accusatory, and angry in tone. Some of the remarks allege that J.K. is mentally ill or has anger problems. Others complain about the landlords and other tenants. The core of those messages seems directed at the law firm and its employees or agents. Counsel for the landlords submitted that all the messages show a propensity for similar conduct. Counsel also submitted that they were admissible as this tribunal is not subject to the rules of evidence. With great respect, I find that although the rules of evidence are less stringent, this tribunal is subject to the law of evidence. It is well established in law that it is inadmissible to tender evidence of bad character. This evidence has little probative value and is highly prejudicial. Furthermore most of the messages occurred after the landlord issued the Notice to End the Tenancy for Cause and therefore they are not relevant evidence regarding the landlord's grounds to issue the Notice. For all of the above reasons, I have only relied upon those messages prior to September 24, 2013 and only those portions that are directly related to the landlords, its agents, and the tenants.

The salient portions of those message are as follows: on September 11, 2013 the tenant accused J.K. of having mental problems; September 17, 2913 the tenant accused J.K. of being a bully, mentally ill, and creating a toxic environment at the rental property; the tenant referred to the landlord's lawyer as a "prostitute blow-jobber"; in another message on September 17, 2013 accused the resident manager J.K. of having the same mental disorder as the person who committed the massacre in the Navy yard

in Washington D.C.; in a third message on September 17, 2013 the tenant accused J.K. of being mentally ill and requiring anger management; the tenant also accused another tenant, likely K.S. of driving while impaired during his employment with a public transit company, and accused the landlord's lawyer of running a whore house. I have not relied upon the rest of the messages.

The landlords also tendered an email in September 2013 from a contractor offering that he heard the tenant make derogatory remarks about J.K. and that J.K. threatened to shoot her. This individual did not testify.

The tenant applicant testified that she was frustrated by J.K.'s lack of response to her requests for lock changes and a deadbolt installation. She also disliked the landlords' constant posting of authoritarian notices and prohibitions in the building. Accordingly she posted the notices on her door for about seventy two hours in mid September 2103. Her intent was to protest against what she felt was oppressive behaviour, hence the reference to 911. She testified that she never did such things before. She also explained that she was a criminal injury compensation claimant. The tenant perceived that the landlords' law firm had some sort of adverse relation to her claim. She testified that she left voice messages and posted some of her notices in that context. She testified that she wrote to D.B. to complain about her letter to management and had approached D.B. off the premises to enquire if she had made any other complaints. She denied threatening her.

The tenant testified that K.S. called her a bitch after she first moved in. She complained to J.K. who refused to do anything about it stating "he's not a very nice person. Just ignore him." When the tenant discovered that K.S. made a complaint about her door display she wrote him in defence. She testified that she called his employer about his conduct towards her. K.S. apparently is employed by a public transit company.

The tenant is also very concerned about her mail delivery and thinks the landlord's agents or Canada Post might be interfering with it.

The tenant submitted many documents as her evidence, such as: the tenancy agreement; the condition inspection report; letters from the landlord and her counsel all of which have been annotated by the tenant with what can be categorized as her submissions or critiques. The tenant also hand wrote several pages of submissions. The tenant included articles about the September 11 World Trade Attacks, the Canadian Libel Law and the Charter of Rights and Freedoms. During the last few minutes of the almost two one hundred and ten minute hearing I advised the tenant that the conference call would be automatically terminated soon and I asked the tenant several times if she would like this matter to continue to another time or day. The tenant advised that she did not wish any further time to continue.

Analysis

I have not relied upon any evidence of events which occurred after the Notice to End the Tenancy which was issued on September 24, 2013. Such evidence is not relevant to prove whether the landlord had cause to issue the Notice on that date. That evidence would include, without limiting the generality of the forgoing, any notices on the tenant's door, defaced public notices, the interactions with D.B., K.S., J.K. and the landlord's law firm occurring after September 24, 2013.

The Notice to End a Residential Tenancy relies on sections 47(1)(d)(i), (ii), (e)(i), (ii) and (h) of the Residential Tenancy Act. Those sections provide as follows:

> **Landlord's notice: cause**
>
> **47** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
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> (d) the tenant or a person permitted on the residential property by the tenant has
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> (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
>
> (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
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> (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
>
> (i) has caused or is likely to cause damage to the landlord's property,
>
> (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
>
> (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;

The landlords' counsel submitted that several paragraphs in the tenancy agreement were material terms and any breaches thereof would entitle the landlords to end the tenancy. The following is a summary of those clauses:

Paragraph 15 states that the tenant will not create a nuisance or disturbance to other tenants in the same building or common area and in particular not permit any radio, television set, record player, tape recorder, or musical instrument to be played to annoy other residents.

Paragraph 16 states that the tenant must obey the rules and regulations of the building.

Paragraph 18 restates the landlord's covenant of quiet enjoyment.

Paragraph 19 requires the tenant to observe statutes, bylaws , regulations and requirements in respect to health, smoking, sanitation, fire, housing, and safety standards.

Paragraph 20 states that the tenant promises not to use the unit or premises for illegal purposes.

The Residential Tenancy Policy Guideline paragraph 8 states:

8. Unconscionable and Material Terms

Material Terms

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. *It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.*

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

that there is a problem;
that they believe the problem is a breach of a material term of the tenancy agreement;
that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

I find that the terms found in the tenancy agreement relied upon by the landlords are not such terms that both parties would have agreed are so important that the most trivial

breach of any of those terms gives the landlords the right to end the agreement. I find that the landlords, who have the burden, failed to prove on the balance of probabilities that the aforementioned were material terms.

Furthermore in the alternative, I find that the landlords have not delivered a notice in writing to the tenant prior to issuing the Notice to End the Tenancy, thereby giving her a reasonable period of time to stop any activity which might be considered a breach of those terms. Accordingly I find that the tenant has not breached a material term entitling the landlord to end the tenancy pursuant to section 47 (1) (h) of the Act.

The landlords' counsel submitted that another tenant's loss of quiet enjoyment which may have been caused by this tenant is a breach entitling the landlord to terminate the tenancy. Policy Guideline 6 states:

6. Right to Quiet Enjoyment

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Ending Tenancy for Breach of a Material Term

A breach of the covenant of quiet enjoyment has been found by the courts to be a breach of a material term of the tenancy agreement. A tenant may elect to treat the tenancy agreement as ended, however the tenant must first so notify the landlord in writing. The standard of proof is high – it is necessary to find that there has been a significant interference with the use of the premises.

With respect, the landlord does not have a right of quiet enjoyment. It is the landlord who covenants with the tenants for the right to quiet enjoyment. Any breach of that covenant entitles that tenant to pursue a remedy against the landlord. The landlord does not have some type of subrogated or reciprocal right to pursue the offending tenant for that breach. The landlord must frame his or her claim against the offending tenant in some other way.

Policy Guideline section 32 states:

The Meaning of Illegal Activity and What Would Constitute an Illegal Activity

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense 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 arbitrator and to the

other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

None of the conduct of the tenant has been proven by the landlords as illegal as defined by the Act, Regulations, Policy Guidelines or any other statue or law. Accordingly I find that the landlord has failed to satisfy section 47 (1) (e) of the Act.

Finally the landlords relied upon section 47 (1)(d); of the Act: that the tenant has *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property or has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.*

The tenant admitted that she: posted the notices and pictures on her door; annotated the landlord's notices; removed other landlord notices; wrote the landlord; sent the notes to other tenants; and left voice messages at the landlord's lawyer's office.

I have weighed the evidence of the parties and find that J.K.'s evidence was given in a straightforward and unembellished manner. I accept all of her evidence. I reject the tenant's explanation for her conduct as illogical. Her conduct was unreasonable and cannot be justified by the perceived inaction by the landlords, the landlords' oppressive rules or the tenant's own history. While I accept that the tenant may have some health issues and security concerns, none of those justify the volume, tone, content, method of her correspondence and conduct which I have concluded was abusive and directed at the landlords, the landlords' employees, agents or her fellow tenants.

J.K. is both an occupant and an agent of the landlord. I find that she was subjected to a campaign by the tenant intended to harass, intimidate and disrupt her abilities to conduct her business as agent of the landlord. I also accept her evidence that she is seriously and unreasonably disturbed by the tenant's conduct and as a result has difficulty in conducting her daily business. I also find that the tenant's conduct toward the landlords' lawyer and law firm is egregious. However, the landlord did not make any submissions as to the effect of that conduct.

The landlords have the burden of proof on the balance of probabilities to establish cause. This onus must be satisfied strictly where the landlord seeks to end a tenancy. Having considered all of the relevant admissible evidence of the conduct of the tenant which occurred before September 24, 2013, I find that the sum total of evidence adduced by the landlords, proves on the balance of probabilities, that the tenant seriously jeopardized a lawful right or interest of the landlord or another occupant and that the tenant significantly interfered or unreasonably disturbed another occupant or the landlord. I find that the landlords have therefore proven cause and I have upheld the validity of the Notice to End the Tenancy dated September 24, 2013. I have dismissed the tenant's application to cancel the Notice to End the Tenancy. Pursuant to section 55(3) of the Act, I Order that the tenancy will end on November 30, 2013.

Conclusion

I granted the landlords an Order for Possession effective November 30, 2013 at 1:00 PM. Should the tenant fail to comply with this Order, the landlords may register the Order with the Supreme Court of British Columbia for enforcement. I grant the landlords recovery of the $50 filing fee in this matter and Order them to retain that amount from the tenant's security deposit. I have dismissed the tenant's application for an Order to cancel the Notice to End the Tenancy with an effective date of October 31, 2013. I have dismissed with leave to reapply all of the tenant's other applications herein. There will not be recovery of the filing fee to the tenant. The landlords must serve the tenant with a copy of this Decision and Order as soon as possible.

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: November 19, 2013

Residential Tenancy Branch