Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cordova Bay Seniors Housing
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in September of 2010 and that rent is due by the first day of each month.

The Landlord and the Tenant agree that on January 30, 2014 the Tenant received a One Month Notice to End Tenancy for Cause which declared that he must vacate the rental unit by March 01, 2014. The reason cited on the Notice to End Tenancy for ending the tenancy was that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Landlord and the Tenant agree that this tenancy was the subject of a dispute resolution hearing on December 23, 2013, which also related to an application to set aside a Notice to End Tenancy for Cause. A copy of the decision related to that matter was submitted in evidence.

In the decision the Arbitrator outlined a variety of the Landlord's concerns regarding the Tenant's behaviour, including:

- interfering with repairs at the residential complex; writing "liar" on notices for upcoming repairs
- being aggressive to another occupant, calling her a liar, and using derogator language when speaking to her
- reporting his concerns about mould in the complex to the health inspector
- informing BC Housing that repairs were being made without proper permits
- informing the municipality of repairs that were being made without proper permits, which resulted in the municipality requiring the Landlord to obtain a permit
- verbally abusing the gardener, including calling him a "liar"
- verbally abusing the maintenance person, by yelling and using profanity
- kicking a vacuum being used by the maintenance person and holding a camera or recording device in his face
- being intimidating when he was served with the previous Notice to End Tenancy, including making hand gestures toward the agent for the Landlord that simulated the use of a gun.

In the decision the Arbitrator noted that the Tenant denied the allegations of intimidation, although he acknowledged using profanity towards the maintenance person; he stated that the only contact he had with the gardener was to hand him a note relating to damage being done to a vehicle while the gardener was using a hedge trimmer; that he has frequently told the maintenance person that the vacuum is too loud and it should not be used as an annoyance; and that he held a recorder up to the vacuum, not the maintenance person's face.

At the conclusion of the hearing on December 23, 2013 the Arbitrator determined that the reports the Tenant made to outside agencies, while frustrating for the Landlord, do not represent a "significant interference or unreasonable disturbance". The Arbitrator did conclude that the Tenant should not be contacting contractors or assuming authority over repairs or maintenance at the residential complex. The Arbitrator also concluded that the Tenant acted inappropriately to the gardener and the maintenance person, although she did not find that the circumstances warranted an end to the tenancy.

In the decision that Arbitrator clearly informs the Tenant that he should be aware of the Landlord's concerns about interfering with tradespeople, staff, and other occupants.

The Witness for the Landlord #1, who is an occupant of the residential complex, stated that on January 18, 2014 she was getting out of her car and the Tenant's dog came

running toward the car, which caused her dog to bark. She stated that she asked the Tenant to call his dog but he did not comply. She stated that throughout the incident he did nothing but stare at her.

The Tenant stated that his dog likes the Witness for the Landlord#1 and that he always gets “excited” when he sees her. He stated that he did not call his dog because the dog is deaf so calling him would be pointless. He stated that he did not speak with the Witness on this occasion or interact with her in any way because he believes she has a vindictive nature and he was avoiding conflict.

The Witness for the Landlord #1 stated that on January 23, 2014 she opened the door leading into the common hallway when she noticed the Tenant standing in the hallway. She stated that the Tenant’s dog came towards her as she passed so she asked the Tenant to call his dog. She stated that she Tenant did not call his dog but when she passed him he said something to her that she did not hear. She asked what he had said and he screamed “shut up”. She stated that she is 82 years of age; that she feels threatened by the Tenant; and that she is afraid of him.

The Tenant stated that the Witness for the Landlord#1 entered into the hallway, which is a confined space, after viewing him through the window in the doorway. He argued that she could have simply waited until he and his dog had exited the hallway. He stated that his dog was not making any noise at all, however the Witness told him to “call his dog off”, after which he told her to shut up on two occasions.

The Witness for the Landlord #2, who is an occupant of the rental unit, stated that she wrote a letter of complaint to the Landlord dated November 29, 2013, which she understands was used as evidence for a previous dispute resolution proceeding. She stated that she found this letter posted on the common bulletin board on January 03, 2014. She feels that the posting of the letter was an attempt to intimidate people who were willing to complain about the Tenant.

The Agent for the Landlord stated that on January 03, 2014 the Witness for the Landlord #2 reported that the letter had been posted. He stated that he found this letter and a second letter of complaint, both of which had been provided to the Tenant as evidence for the hearing on December 23, had been posted, and that he removed both letters. He stated that his wife found the letters posted again on January 04, 2014 and she removed them.

The Agent for the Landlord stated that notations had been made on the letters that were located on the bulletin board in January of 2014, and he assumes the notations were made by the Tenant and that the letter was posted by the Tenant. Copies of the letters that were posted were submitted in evidence.

The Tenant stated that he wrote the word “out” on the letters of complaint. He stated that these notations were made when he was organizing his papers and the notation served to remind him that the documents should be discarded. He stated that he also

wrote the word “vendetta” on the one of the letters, which he wrote because he believed the author of the letter had a vendetta against him. He stated that he did not add the reference to the author’s barking dog to the letter.

The Tenant stated that he did not post the letters in the residential complex at any time. He stated that he disposed of the letters in the recycle bin and he speculates that a third party removed the letters from the recycle bin and posted them.

The President of the Society stated that on January 06, 2014 he went to the rental unit for the purposes of providing him with a letter regarding the posting of the letters. He stated that the Tenant would not open the door so he placed it through the mail slot in the door and the Tenant took it directly from his hand. He stated that the Tenant’s tone during this interaction was intimidating and frightening.

The President of the Society stated that on February 12, 2014 a representative of the municipality attended the residential complex to inspect repairs that had previously been inspected and approved by the municipality. He stated that the representative told him that he had been sent to inspect the repairs as a result of a report made by the Tenant.

The Tenant stated that he has not reported any concerns with the repairs at the residential complex to any government body since the hearing on December 23, 2013. He stated that on February 11, 2014 he made a Freedom of Information request regarding documents related to repairs the had previously been made to the residential complex. He stated that he wanted these documents simply because he was concerned about the veracity of evidence that had been provided at the hearing on December 23, 2013 and he wanted to clarify what information the municipality had collected in order to protect himself from future harassment.

Analysis

When considering this matter I have considered the Arbitrator’s decision from the hearing on December 23, 2013, for the purposes of determining that the Tenant was clearly advised to refrain from interfering with tradespeople, staff, and other occupants. I have also considered that decision for the purposes of viewing this tenancy in its entirety. In other words, when considering whether the Landlord has grounds to end this tenancy on the basis of events that have occurred since December 23, 2013, I will not consider them as isolated events, but will consider whether they represent a continued pattern of behaviour that warrants ending the tenancy.

Section 47(1)(d)(i) of the *Act* authorizes a landlord to end a tenancy if a tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. On the basis of the undisputed evidence, I find that the Tenant received a One Month Notice to End Tenancy on January 30, 2014, in which the Landlord informed the Tenant that his tenancy was ending on the basis of section 47(1)(d)(i) of the *Act*.

I find that the Tenant is not under any obligation to be friendly to other occupants of the residential complex. I therefore find that his decision not to speak with the Witness for the Landlord#1 on January 18, 2014 was reasonable, considering he has been clearly informed to not interfere with other occupants and his past interactions with this occupant have been negative.

I find, however, that the Tenant did have an obligation to control his dog that was interfering with the Witness for the Landlord #1 and her dog on January 18, 2014. In the event that the Tenant's dog is deaf, I find that the Tenant should have attempted to interfere by taking physical control of his pet or, preferably, by keeping the dog on a leash if he is unable to control him with verbal commands. It is not acceptable to simply stand by and let a pet bother another occupant.

On the basis of the undisputed evidence, I find that on two occasions on January 23, 2014 the Tenant told the Witness for the Landlord #1 to "shut up". I find that the Witness had every right to ask the Tenant to control his dog and that his response to that request was entirely unacceptable.

I find that, on the balance of probabilities, on January 23, 2014 the Tenant's dog was interfering with the Witness for the Landlord #1. In reaching this conclusion I was influenced, in part, by the Tenant's acknowledgement that the Witness asked him to control his dog. I find it highly unlikely that this request would have been made if the dog was sitting quietly. In reaching this conclusion I was also influenced by the Tenant's testimony that his dog always gets excited when he sees the Witness, so I find it doubtful that the dog was sitting quietly on this occasion. I find that the Tenant again breached his responsibility to control his pet and that these continued breaches served to harass and disturb the Witness.

In reaching this conclusion I have placed no weight on the Tenant's submission that the confrontation on January 23, 2014 could have been avoided if the Witness for the Landlord #1 simply did not enter the common hallway until the Tenant and his dog had left the hallway. To suggest that an occupant of a residential complex should avoid entering common areas while he is in the area suggests that the Tenant us unaware of his obligations as a Tenant. As the evidence has not established that the Witness initiated the conflict between the parties, she should not be expected to avoid common areas simply because the Tenant may not be able to control his dog or because he may become verbally abusive.

I note that it was not necessary for the Landlord to discuss the incidents that occurred on January 18, 2014 and January 23, 2014 with the Tenant, as the Tenant has previously been advised that he must avoid conflict with other occupants. I find that any reasonable person would understand that this includes not telling other people to "shut up" and ensuring that a pet does not disturb other people.

I find, on the balance of probabilities, that the Tenant posted the letters of complaint that were located on January 03, 2014 and again on January 04, 2013. This decision was

guided by *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, in which the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

In the circumstances before me, I find the version of events provided by the Tenant to be highly unlikely. Even if I were to give credence to the speculation that a third party removed the letters of complaint from the recycle bin and then posted them on the bulletin board, there can be no reasonable explanation of how they would have been posted again on January 04, 2014. In my view, the only reasonable explanation is that the Tenant kept a copy of the letters and that he posted them on January 04, 2014 after they were removed, as nobody else with reason to post them would have access to the letters. Given that the only reasonable explanation is that the Tenant posted the letters on January 04, 2014, I find it reasonable to conclude that he also posted them on January 03, 2014.

I find that the posting of the letter did serve to harass the authors of the letters and that it was reasonable for them be disturbed by that. More importantly, I find that posting the letters is a form of intimidation that serves to discourage other occupants of the rental unit from recording their complaints. I find that this seriously interferes with the Landlord's obligation to ensure all occupants enjoy the use of the premises without unreasonable disturbances.

I find that the Tenant is not under any obligation to be friendly to representatives of the Landlord. I therefore find that his decision to receive documents from the Landlord through his mail slot on January 06, 2014 was reasonable, considering he had been clearly advised to avoid conflict with the Landlord. As there is no allegation that the Tenant actually said anything inappropriate, I find that his behaviour on January 06, 2014 was acceptable.

I note that in determining whether the Landlord had grounds to serve a One Month Notice to End Tenancy on January 30, 2014, I have not considered any incidents that occurred after that date, including any contact the Tenant had with the municipality after January 30, 2013. In my view, anything that occurred after January 30, 2014 cannot serve to support a Notice to End Tenancy that was served on January 30, 2014, unless the incidents serve to demonstrate a pattern of behaviour. As there has been no suggestion that the Tenant made unfounded reports to any government body after the hearing on December 23, 2014, I cannot conclude that any subsequent reports

demonstrate a pattern of behaviour that led to the service of the second Notice to End Tenancy.

After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has established there are grounds to end this tenancy pursuant to section 47(1)(d)(i) of the *Act*. In reaching this conclusion I was heavily influenced by the number of incidents that have occurred in the 31 days since the hearing on December 23, 2013. I find that the number and the nature of the disturbances caused by the Tenant in such a short period of time are sufficient, when considered in conjunction with the conclusions of the previous Arbitrator, to convince me that the Tenant's behaviour is antagonistic and disruptive to other occupants, and that his behaviour is likely to continue unless this tenancy is ended.

As the Landlord has established there are grounds to end this tenancy, I dismiss the Tenant's claim to set aside the One Month Notice to End Tenancy.

Conclusion

As I have dismissed the Tenant's application to set aside the One Month Notice to End Tenancy, I grant the Landlord an Order of Possession, as requested at the hearing, pursuant to section 55(1) of the *Act.* The Order of Possession will be effective two days after it is served upon the Tenant.

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: March 26, 2014

Residential Tenancy Branch