Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Salt Spring Island Community Services Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction
This hearing dealt with an application by the tenant for an order setting aside a 1 Month Notice to End Tenancy for Cause and granting him more time in which to make the application. Both parties appeared and had an opportunity to be heard.

All of the evidence has been considered when making this decision but only the evidence on which I relied is referred to.

Issue(s) to be Decided
Does the landlord have cause, within the meaning of the *Residential Tenancy Act*, to end this tenancy?

Preliminary Issues
In his application for dispute resolution the tenant also asked for:

- a monetary order;
- a full review of a previous Residential Tenancy Branch decision;
- an order stating that a policy made by the landlord was illegal;
- that two members of the landlord's staff be fired; and,
- that two particular tenants in the same building be evicted.

In submissions made after the application for dispute resolution was issued the tenant, through his advocate, asked for:

- a six month extension to the tenancy on certain conditions;
- the return of the tenant's access to health and social services from the landlord organization;
- a lifting of the ban imposed on the tenant by the landlord which prevents him from going to the main office of the landlord;
- the imposition of a fine against the landlord pursuant to section 95 of the *Residential Tenancy Act;*

- a distribution of the decision rendered at the conclusion of this hearing by the Residential Tenancy Branch to a list of organizations.

At the beginning of the hearing the tenant's advocate withdrew the requests for the firing of staff , the eviction of particular tenants, or review of the previous decison.

The parties were advised as follows:

- The Residential Tenancy Branch (RTB) has no jurisdiction over program or treatment issues.
- The only decision that may be made by an arbitrator on an application such as this is whether the landlord has cause, within the meaning of the legislation, to end the tenancy. If the decision is in favour of the tenant, the tenancy continues. If the decision is in favour of the landlord, it does not. The *Act* does not give arbitrators the power to grant a conditional extension of a tenancy.
- The RTB has no jurisdiction over facilities that are not part of the residential premises. Accordingly, it has no authority to make any order regarding the ban imposed against the tenant by the landlord.
- Section 95 fines are imposed by a separate process, not through the dispute resolution process.
- The RTB provides copies of decisions to the parties only. Any further distribution is at the discretion of the parties.

With regard to the tenant's claim for a monetary order, pursuant to rule 2.3 of the *Residential Tenancy Branch Rules of Procedure*, that claim was severed from the tenant's application for an order setting aside the notice to end tenancy with leave to the tenant to re-apply in a separate application.

The tenant also asked for a subpoena for the attendance of the tenant's mental health nurse. I advised the parties that I was not prepared to grant a subpoena at this time. I also advised that while I would be prepared to consider another application for a subpoena for this particular witness in the future, I would like the following evidence presented in support of such an application:

- A written request from the tenant to the witness asking her to testify.
- The tenant's written consent to the witness for release of his personal/medical information.
- A written summary of what the tenant expects the witness to say in her testimony.
- A letter from the witness saying she will not testify unless required by subpoena to do so.

The parties did not complete the evidence on the first date set for hearing and the hearing was adjourned to a date and time convenient to all the parties; August 19, 2014 at 9:00 am.

Between the two hearing dates the tenant filed thirteen additional packages of evidence and submissions.

In his submissions the tenant questioned whether he was going to receive a fair decision given the fact that I had heard and decided a previous dispute between the same parties and that he was going to criticize that decision in the course of this hearing.

At the beginning of the continuation of the hearing I referred to *Residential Tenancy Policy Guideline 10: Bias and Conflict of Interest* which states as follows:

> "What bias is not.
>
> The fact that one or both of the parties may have appeared before the arbitrator previously, or that the arbitrator previously denied an application by one of the parties, does not by itself support a claim of bias.
>
> If an allegation of bias or conflict of interest is raised at the hearing, the arbitrator will decide whether or not there is any basis to support the allegation. If the arbitrator concludes that there is no reasonable apprehension of bias then the hearing will proceed and this will be noted in the arbitrator's decision."

I advised the parties that there was not any evidence to establish bias and I would be continuing with the hearing.

In his submissions the tenant again a challenged the previous decision. The parties were advised that there were procedures for appealing decisions and that information was included with the previous decision.

The next issue was the additional evidence filed by the tenant. The landlord acknowledged receipt of packages 1 to 8. The tenant's agent attempted to serve package 9 after the dead line. The landlord refused to accept it. The tenant then filed packages 10 to 13 without attempting to serve them on the landlord. As of the date of the continuation I had not yet received packages 10 to 13.

When questioned about the contents of packages 9 to 13 the tenant's advocate said that most of the material had been covered in previous written submissions by the

tenant and that any details that had been omitted would be covered in oral testimony. Accordingly, I ruled that I would not consider packages 9 to 13.

Some time after the hearing the tenant submitted a lengthy letter. As the hearing was already concluded and there was no evidence that it had been served on the landlord, I did not consider the letter as evidence when coming to this decision.

Background and Evidence

This month-to-month tenancy started in July of 2008. The monthly rent of $560.00 is due on the first day of the month. The tenant receives a Supported Independent Living subsidy and his portion of the rent is $375.00.

The landlord is a non-profit agency in a small community. They operate a number of programs: some of which are social service and mental health programs, including the local food bank; others are housing programs, three buildings in all. Community donations and volunteers are an important part of their existence.

The building in which the rental unit is located is designed as low income housing. There is no on-site mental health or social services; not even a resident manager. Residents who require mental health or social services receive those services at locations away from this building.

In the fall of 2013 the tenant filed an application for dispute resolution to the Residential Tenancy Branch for a monetary order and an order compelling the landlord to comply with the Act, regulation or tenancy agreement. After hearing several hours of testimony, listening to several hours of audio tape and video tape, and reading several hundred pages of written material filed by the tenant, I dismissed his claim in full. Much of the tenant's evidence included various allegations against the Housing Coordinator and the Program Director. The decision was dated December 9, 2013.

After the decision was received by the parties the Executive Director of the landlord encountered the tenant at a public market. He took advantage of the meeting to talk to the tenant about the decision and, apparently having decided that subtlety was wasted on the tenant, to warn the tenant in the strongest terms possibl, that continued attacks on his staff would not be tolerated and could affect the continuation of the tenancy.

The landlord's witnesses testified that the tenant's behaviour, which was problematic before became intensified after the decision was received.

The Housing Coordinator testified that he is at the building three or four days per week for short periods of time. He is responsible for the building maintenance and rent collection and has the most direct contact with the tenants.

He testified that many of the residents of the building expressed to him their discomfort with the tenant recording everything. He said that the tenant has his equipment arranged so that it is not visible and that he never discloses when he is taping. It is only when a tape appears later that the other party to the conversation finds out that their interaction was taped.

He stated that he received many complaints about the tenant from his neighbours. When asked for more specific numbers on cross-examination the witness said that at least half of the building complained about the tenant's tape recording, either verbally or in writing. Some of the other tenants approached him about starting a petition against the tenant, an idea which he quickly quashed.

At the beginning of April, in an attempt to reduce some of the friction and tension they felt existed in the building the landlord introduced a new policy. The policy stated that failure to follow these new guidelines and policies would result in a warning letter and that further disregard for these policies may result in an eviction for cause. The new policies were:

1. "No tenant shall be permitted to approach another tenant in such a way that the other tenant feels 'bullied or harassed', or try to 'lobby' a tenant to a particular cause.
2. No tenant shall be permitted to approach another tenant to tape record a conversation to be used against a tenant at a later date. Tape recordings of conversations without prior consent or knowledge will not be tolerated anywhere on [the] property. This includes the RTB sanctioned, designated area where tenants who smoke, must congregate.
3. 3. No tenant shall deliberately loiter in hallways or around the doorways of tenants' suites. Such actions shall be deemed an invasion of tenants' privacy as outlined in the RTA."

The document concluded with the following:

> "It is our sincere hope that all tenants will abide by these policy changes for the good of all tenants at [the property]. We are committed to making [the property] a safe, friendly, bully-free environment and a place for all tenants to be proud to call their home.

> We ask that each and every tenant carefully read this document and acknowledge their understanding of its contents by signing their name at the bottom where indicated.
>
> We believe enforcement of these measures will result in a noticeable, positive change for all tenants and think everyone in advance for their collective help in enacting these changes.
>
> I have read and understood the above policy changes. I will abide by their implementation and understand that my tenancy at [the property] may be jeopardized if I decide not to follow them."

The landlord asked all the tenants of the building to sign the new policy. All the tenants of the building did except the tenant. After a long discussion with two of the landlord's managers which included the information that his failure to cooperate could negatively impact his tenancy. The tenant declined to sign the policy. At that time the tenant said he needed more time to think about it.

In subsequent correspondence the tenant confirmed that he was not going to sign the policy. He explained that he was in agreement with paragraph 1 but not paragraphs 2 and 3. He argued that the policy appeared to be aimed at preventing non-smokers sourcing out where cigarette smoke is coming from in the building.

In the hearing and in his written material the tenant described the importance of tape recording conversations and events to him; both as a coping mechanism for his disability and as a protective weapon when he was bullied or threatened by others.

On May 28, 2014 the landlord issued and served a 1 Month Notice to End Tenancy for Cause. The reason stated on the notice was that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Executive Director testified that he has not had any direct contact with any of the other tenants. He stated that he is concerned about two issues:

1. The level of stress his staff are experiencing as a result of the tenant's actions. A letter he filed as part of the landlord's evidence expressed these concerns as follows:

   > "Over the past several years . . . employees have withstood a relentless and escalating barrage of accusations and insults from [the tenant]. . . [The tenant] has approached me in person, in writing, and in dozens of long-winded voice

mails to have employees fired for some transgression he has perceived. . . As an employer I have concerns about the exposure of our employees to such hostility and risk to their mental health in their workplace. It is too much to expect employees to tolerate being taunted regularly with accusations of being corrupt and abusive by a person who has openly declared his intention to do whatever he can to have them fired."

2. The impact of the tenant's action on the reputation of the organization. He hears things from community members, hears about Facebook postings, and sees the material that tenant has filed as part of his evidence; all of which are very negative about the agency.

In his testimony he emphasized that this facility was for the provision of housing only; it is not equipped to provide mental health support. He also stated in his letter that "It is clear the [the tenant] has significant barriers to being successful in community housing without supports for his mental health issues."

This comment was echoed later in the hearing by a witness for the tenant who said that the landlord should not be placing client who require mental health supports in this building as it is not a place for people who required mental health support. This statement was made as part of her argument that the landlord should be providing mental health supports and other supports in the building.

In his response to the Executive Director's evidence the tenant's advocate argued that the tenant's ability to function depends on the level of support he receives from the mental health programs offered by the landlord agency in other parts of its operations.

The Program Director, AL, submitted a letter and testified orally. In her evidence she described many unpleasant interactions with the tenant that occurred both prior to the last hearing and since.

She described one occasion when, after she had made a decision the tenant did not agree with, he walked with her for several minutes during which he threatened to get her fired, tell everybody what a terrible person she was, to write about her in the newsletter, and to let all her co-workers know the truth about her.

The next morning there were several messages left on the office answering machine as well as on the voice mail of many of her colleagues from the tenant all saying what a terrible person she was and urging them to fire her.

That afternoon the tenant met her again. He berated her for her incompetence; her immigrant status and the fact that English is her second language; accused her of being in league with the smokers, and so on. The conversation ended in her office. She told the tenant repeatedly she was shutting the door. Eventually the door closed and the tenant left. A half hour later the police came to see her at her office in response to a complaint from the tenant that she had assaulted him by slamming the door on his foot. After seeing the door the police apologized to her and the matter was dropped.

In his response to the witness's evidence the tenant's advocate stated that the witness should have known better than to let the tenant into the office with her.

This is one of the events that were described in the last hearing. As part of the evidence for that hearing the tenant submitted several tapes of conversations with the Program Director. In my decision I referred to the tenant's interaction with this person as follows:

> "Although the tenant went to great lengths to depict AL as intimidating, threatening and disrespectful, the conversations he submitted show just the opposite. He does not seem at all intimidated and is very forceful in presenting his side of the debate or his view point. In fact, he refuses to listen to listen to anything she tries to tell him; he just keeps talking over her. At the end of once conversation when AL walks away from him in frustration the tenant asks her if she's upset. When she replies that she is, he tells her it's her fault that she's upset. Another conversation, in which AL never raises her voice, ends with the tenant saying to her, 'I'm going to get you replaced."

In the previous application the tenant asked that the Housing Coordinator and Program Director be removed from their positions. The previous decision contained the following direction:

> "The Residential Tenancy Branch does not have jurisdiction regarding a landlord's human resources administration or the administration of any ancillary program operated by the landlord. Accordingly, no order could be made regarding the continued employment of the landlord's staff member or the Car Share program."

When the tenant filed this application for dispute resolution he included the following: " I am asking for the firing of [Program Director} and [Executive Director] for abuse and corruption."

At the beginning of this hearing the tenant's advocate made it clear that they were not pursuing this request. However, between the first and second dates of this hearing the

tenant filed additional evidence in which he stated that he was most certainly asking that these employees be fired.

In her oral testimony the witness talked about how personally hurtful the tenant's remarks about her have been. She testified that strangers come up to her and talk to her about what she has done to the tenant; she received an inquiry from the local newspaper as well as the local MLA's office about the tenant's situation; and she was very embarrassed when the police came to her office.

In her written submission the Program Director expressed her feelings as follows:

> "I have worked for [the landlord] for over 20 years and had many difficult tasks and dealt with many different people with different disabilities and barriers, but none have made me lose sleep, feel stress and sometimes even demoralized and depressed like this man does."

In his argument the tenant's advocate suggested that the Program Director had very little insight into what goes on in the mind of a person with functional Autism and, further, she has a difficult time responding to symptomatic behaviours of a person with Autism such as repetition, or asking for time, clarity or counsel. The witness responded that in the course of her twenty-two year career in housing she has worked with many high I.Q. Autistic people and further, there are other Autistic people living in the same building who are required to follow the rules.

The tenant did not speak directly until the end of the hearing. He said he had experienced abuse from all three managers; that they were a corrupt team; they have told many lies; and his language (which his advocate had previously acknowledged as being extreme) only mirrors the corruption and abuse he has experienced.

The tenant's written submissions contained the same allegations in much stronger terms.

In support of its' argument that the tenant's action could have a negative impact on the landlord's reputation in this small community the landlord filed the following:

- A posting on the tenant's Facebook page made after he had received the notice to end tenancy:
  ". . .the staff who manages this building who are corrupt and have abused me too many times to count, (besides the director . . who has also abused me and assaulted me), are trying to evict me. They are retaliating against me because I have told the truth about their abuse of me and I am not going to hold it back any longer."

- A copy of the tenant's request to the Food Bank which is operated by the landlord and which relies on volunteers:
  "[The Program Director] and [Executive Director] try to stifle those they victimize (like me) by evicting and banning them after they abuse you|

  [Executive Director] is a dictator. He lies and tries to hurt people by banning them unfairly to wield power over them. He's not worthy to run [the landlord]. He emotionally abuses me. Although this is the truth, he will lie by denying it! [The landlord} is corrupt due to the present management running it."

One of the landlord's witnesses pointed out that one of the tenant's evidence packages was served on their office by a local journalist.

The tenants filed dozens of letters of support, primarily from community members, including a member of the family that originally donated the land for this housing development. Many say nothing more than that the tenant is a nice guy; others ask that the tenant's eviction be reversed. One letter was a copy of a letter to the board of directors for the landlord agency asking that other decision made regarding the tenant be overturned.

The tenant's position was that he had not shared his opinions about the landlord's staff except in the evidence filed in support of the RTB hearings. However, in his statement at the end of the hearing he said he had expressed these opinions to Victim Services, to the local newspaper (as a friend), and to a friend's Facebook page.

The tenant's advocate's response to the evidence about the tenant's actions against the Program Director is:

1. The tenant has Autism.
2. The landlord's staff does not understand the tenant's condition and should take steps to learn how to more effectively work with him.
3. The landlord should provide the tenant with the mental health supports he needs.

The tenant's response is:

1. I have Autism.
2. Everything I say is true.
3. I am a nice person.

Analysis

First of all, the notice to end tenancy was posted to the tenant's door on May 28. Section 47(4) f the Act states that a tenant may dispute the notice by making an application to dispute it within ten days of receiving it. The tenant filed his application for dispute resolution on June 4, well within the time limit. Accordingly, no order extending the time in which the tenant could file his application was required.

As explained to the parties in the hearing the issue I have to decide is whether the evidence shows, on a balance of probabilities, that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

I am satisfied that it does.

The tenant has engaged in a relentless private and public campaign against the Program Director, and to a lesser extent, the Housing Manager for almost two years. His allegations are extreme and hurtful. His campaign has included as many members of the public as he can engage. He has not established the truth of any of his allegations against her. Although he has received direction from myself and his advocate on more than one occasion that the RTB does not have the jurisdiction to order that any landlord fire one of it's staff he continues to ask for this remedy at every opportunity.

During most of the time period when the tenant has been engaged this behaviour he has been receiving mental health services from the landlord agency at its' main office. The provision of or subsequent limitation on the receipt of these services made no difference to his attitude or his actions. Since then he has been receiving the counsel and support of his advocate, a former employee of the landlord agency. Nothing changed. Even after his tenancy was formally at risk, there was no change in the tenant's attitude or actions towards the landlord's staff.

The tenant's application is dismissed. The 1 Month Notice to End Tenancy for Cause dated May 28, 2014 is upheld.

I want to be clear about what this decision does not decide.

It does not decide whether the policy presented to the tenant in April is permitted by the legislation. The tenant's decision not to sign the policy is not one of the factors that have weighed against the continuation of his tenancy.

It does not decide whether the tenant's surreptitious taping of his conversations and interactions with other people are permitted by the privacy legislation of the province.

A word about the evidence given by a woman, who is also a resident in this building, regarding a conversation she had with a person with whom the tenant is in conflict. The third person did not testify and the truth of his statement was disputed by the landlord's witnesses. This was hearsay evidence. Hearsay evidence is not very reliable evidence. All this testimony established was that the third person made a particular statement to the witness; not the truth of the statement itself.

Conclusion

The tenant's application is dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the dispute resolution officer must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession.

The landlord's representations did amount to an oral request for an order of possession and accordingly, one is granted to the landlord.

The landlord had accepted the past rent for use and occupation only. As the rent has been paid to the end of September the effective date of the order of possession will be September 30, 2014. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.

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: September 15, 2014

Residential Tenancy Branch