Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Randall North Real Estate Services Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, OLC, PSF, FF

Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated August 6, 2014, given alleging that the tenant or a person permitted on the premises had significantly interfered with or unreasonably disturbed another occupant or the landlord. Proof of that claim is a ground for eviction under s.47 of the *Residential Tenancy Act* (the "*Act*").

By her amended claim, the tenant also seeks a monetary award for damage or loss under the *Act* or the tenancy agreement, an order that the landlord comply with the law or the tenancy agreement and an order the landlord provide a service or facility.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that there are good grounds for the Notice or that the tenant is entitled to any of the relied claimed in her amended claim?

Background and Evidence

The rental unit is a two bedroom suite on the main floor of a house. The tenant occupies the suite with her son. There is a second rental unit above. It appears the yard is shared by occupants of the two suites.

This tenancy started on September 1, 2009, though the tenant's son, now twelve or thirteen, has lived there most of his life. The tenant says she moved in in the year 1997.

The rent is $1000.00 per month. The landlord holds a $275.00 security deposit.

In support of the Notice the landlord submitted evidence from which six grounds can be discerned. First, the experience of a Ms. M. (first name) who lived in the upstairs suite

until January 31, 2014 as a sub-tenant of the tenants M and F. Second, the experience of M and F themselves after Ms. M. vacated. Third, a February 21, 2014 "threat" received by the landlord's representative Ms. J.. Fourth, the experience of S and G, the upper tenants who took occupancy on February 1, 2014. Fifth, the experience of Mr. D.S. the head of the respondent property management company. Sixth, an incident involving a contractor removing a squirrel from the premises.

Ms. J. submitted an email from Ms. M. dated November 26, 2013, inquiring about her shower and noting that the tenant was "battling" her son's behavioural issues. The email indicates that the son "screams, attacks, slams the doors over and over, and screaming and pounding all through the house" shaking her rental unit. Ms. J. notes that she doesn't want to cause the tenant any more problems but wanted to let the landlord know in case she, Ms. J. required further help.

It does not appear that the landlord representatives attended to investigate or raised this letter with the tenant.

Ms. J. submitted a second email from Ms. M. dated January 8, 2014, indicating she had given her notice to her landlords, the respondent's direct tenants M and F. Ms. J. describes things as being "out of control downstairs" and that the tenant had accused her of calling child services. She states the tenant was confrontational and that she, Ms. M., felt threatened. Ms. M. notes she has tried to be patient and understanding and did not call anyone "about the horrible disruptions and noises that occur daily form them." Her email goes on to say "it certainly causes me extreme inconvenience, but the stress, and now unsafe feeling I have living here is not worth it."

The tenant testified that Ms. M. had to leave to take up a nursing practicum in another city and simply used the foregoing complaints as a way to end her tenancy before its expiry. She indicates that she and Ms. M. got along well and that there were screaming and yelling outbursts from upstairs as well, which she did not complain about. She says she was unaware of any complaints and did nothing to make Ms. M. feel unsafe.

The landlord's representative Ms. J. submitted an email from the upper tenant F dated January 10, 2014 giving notice that he and M would leave by February 1st. No reason was given. Ms. J. submitted a second email, from M and F, dated five days later, giving the reason "which has prompted us to have to move from the unit." The email goes on to describe how, back in 2012, the tenant's altercations with her son would occur about once a week for twenty minutes and that they would go downstairs and diffuse things between the tenant and her son. They say that after a year the incidents increased to

four or five times a week and included vulgar and “violent” language and “more forceful” stamping and running. One of M or F says “I was frightened and uncomfortable.”

M and F’s email goes on to say,

> Around mid-September, early October, I received several messages from our tenant, that the situation was progressively worsening; furniture being thrown, holes being punched in walls, threats, and physical fighting (with mom on the defence). Our sublet was highly uncomfortable.

The email author (M or F) goes on to say “I decided that with the escalating situation, I did not want to live in the midst of this problem …” and requests a rebate of February rent.

The tenant testified that M and F wanted to quit their lease because they’d found a better place and were just using the alleged conduct as an excuse to end their fixed term tenancy.

On February 6, 2014 Ms. J. sent the tenant a letter entitled “formal Notice for Conduct” referring to the foregoing four emails, informing the tenant that the upper suite had been re-rented for March 1st and ending saying “I understand this is being worked on and sincerely hope that all tenants in this house can live comfortably.”

The tenant had the post office return the letter, unopened, because, she says, it had the wrong postal code on the envelope.

On February 6 and 7, 2014 there was an incident related by Ms. J. where the tenant called the landlord’s “emergency number” to relate a sublet of the upper suite without authorization. In total there were five calls. It appears the tenant dealt with Mr. D.S., the president on some of them and it is alleged she: threatened she would call the owner to complain, called Ms. J. unprofessional, called the management company unprofessional and threatened a lawsuit for harassment. It is alleged that on her next call she yelled, demanded the phone number of Mr. D.S.’s superior and called him a liar. It is alleged that on February 13th the tenant left a phone message for Mr. D.S. calling Ms. J. “mentally unwell.”

Ms. J. February 13th note of the incident says the tenant’s calls had been both threatening and accusatory and they both agreed that she must put all her concerns in writing in the future.

On February 17th Ms. J. sent the tenant a "second formal Notice for Conduct" relating the five "threatening and accusatory" calls made by the tenant on the emergency line and asking the tenant to cease such behaviour. This envelope was also refused by the tenant, who said she thought Ms. J. was merely resending the earlier letter.

Ms. J. testified that on February 21sth the tenant left a telephone message saying she was getting along with the new upper tenants and did not want to have to "go to the Tenancy Branch" to complain about Ms. J. or her boss or because the wiring in the suite was "not being to code because the place is a fire hazard…"

On July 31, 2014 the landlord's pest control contractor was removing a squirrel from an upstairs wall of the house. It is not disputed that the tenant confronted him about his plan for the animal and when she learned he intended to "euthanize" it, she tried to release the animal. The upstairs tenant S saw the incident from her window and told the tenant not to bother the man.

The tenant states she is an animal rights activist and intended to release the squirrel. She wished to testify that the squirrel problem had been created by the landlord's failure to trim the trees by the house but I deemed such evidence irrelevant to the issues at hand.

The contractor wrote about it to the landlord and, as well, the upper tenants S and G sent an email to the landlord dated August 1st, stating that during the squirrel incident the tenant had been crying and "causing a huge scene." The email goes on to relate:

> I have on more then [*sic*] one occasion had to go down to her unit to stop the noise form her son having an anger fit. Causing me to raise my voice, threaten to call the police, and basically making me feel stressed as this happens throughout the day and night sometimes. The noise of yelling, cussing, objects being thrown on walls, pounding on walls. Which all radiate into my unit and disturb my sleep and my roommate, and are daily activities. I feel I can't have company over to my home as the unpredictable behaviour of her an her son make us embarrassed if it happens while company is over."

Further on in the email its author states "[m]y stress levels and anxieties about the ongoing situation is [*sic*] affecting my physical [*sic*] and health and my roommates [*sic*].

Ms. J. testified she did not share this complaint with the tenant. Rather, the Notice to End Tenancy was issued a few days later.

The parties filed evidence relating to incidents following the August 6th Notice, however, the Notice stands or fall based on circumstances and events as they existed on the date

the Notice was issued. Evidence of events after the Notice cannot serve to support the allegations in it. A landlord is free to issue another Notice in the event that there is later occurrence justifying eviction under the *Act*.

Analysis

The parties were informed at the start of the hearing that during their testimony they were obliged to refer to and describe all documentary evidence they had filed so that each document's relevance and admissibility could be determined. They were directed to ensure they do so while giving evidence. This decision is based on the sworn testimony received and on the documentary evidence adduced accordingly.

I dismiss the tenant's claim for a monetary award, a compliance order and her request that the landlord provide a service or facility. The particulars of those claims, apparently concerning a parking spot and a fireplace, are vague and the tenant did not present substantive evidence to justify them.

In regard to the Notice to End Tenancy, some general points should be stated.

The ending of a tenancy is very serious matter. For many tenants, including this one, an eviction will deprive them of their home. It is incumbent on a landlord to provide cogent, convincing evidence to justify an eviction and for an arbitrator to scrutinize that evidence with greater care.

In this case the question is whether or not the evidence shows that the tenant or her son have significantly interfered with or unreasonably disturbed another occupant or the landlord.

I find it does not.

Central to this finding is the lack of direct testimony from persons claiming to have been interfered with or disturbed. That lack of testimony deprives me of a very significant factor in the assessment of the evidence. Witnesses like Ms. M., M and F and the new tenants S and G were not present to give their evidence under oath in the presence of the tenant, to provide necessary details, explain possible contradictions, explain vague or general statements, or to be questioned about their evidence.

Evidence given in the form of unsigned emails is marginally persuasive. In the case of the statements purportedly from M and F and from S and G, that marginality is further

reduced by the fact that the emails were obviously written by only one of each pair but it is not stated which one.

Some statements are contradictory. Ms. M's November 26, 2013 statement indicates she was dealing with the situation and did not need the landlord's help at that time. The M and F email of January 15, 2014 relates a much graver situation; that in mid-September and early October 2103 the situation was worsening and that their subtenant Ms. M. was "highly uncomfortable." While there may be a reasonable explanation for these two apparently differing statements on a decisive point, it was not given.

The January 15, 2014 email from M and F claims there were "holes being punched in walls" in the suite below. Surely a landlord on being informed of such damage would inspect the rental unit and confirm it. The lack of such corroboration tends to mark the allegation as exaggeration, casting a shade of doubt on the remainder of the email's contents.

None of the complaining tenants seem to have complained at the time the interference or disturbance was taking place, thus enabling the landlord to investigate and confirm the conduct. Indeed, while Ms. M. indicates she was driven out of her suite by the conduct of the tenant and her son, the new tenants S and G appear to have resided in the same suite for five months without relaying any complaint until the squirrel incident at the end of July.

The evidence regarding the tenant's calls to the landlord's emergency line do not evince behaviour warranting eviction. A threat to do a lawful act, like calling the Residential Tenancy Branch or an electrical inspector or to sue someone may disturb the landlord's officers or employees but the threats are threats to enforce a right or take a lawful measure. Even though a tenant may be unreasonable when threatening them, they are not an "unreasonable disturbance" of the landlord. The tenant may have been confrontational on some or all of the calls. She may not have been pleasant to deal with. Neither of those behaviours warrants eviction in my view. The landlord's response to require that future concerns be in writing was the appropriate response.

The tenant's July 31, 2014 confrontation with the landlord's pest control contractor and her frankly inappropriate behaviour was clearly an interference with him carrying out his job. Whether it was a significant interference is not shown in the email he sent to the landlord about the incident. The email does not show that he was particularly interfered with or disturbed by it. The upper tenant Ms. S. saw it and described it as "causing a huge scene." Without some evidence about what that means or how she might have been unreasonably disturbed by it, I cannot reach any conclusion.

In result, I cancel the one month Notice to End Tenancy.

I wish to make it very clear that this decision is not a finding that the tenant has not significantly interfered with or unreasonably disturbed another occupant or the landlord. This decision holds, for the most part, that the evidence the landlord has presented is not of a quality sufficient to prove the allegations in the Notice on a balance of probabilities. Had some or all of the email authors attended, clarified and expanded on their evidence under oath, the result may have been different; the tenant may have been evicted.

The evidence I received at hearing shows me that the tenant has been doing her best to cope with an extremely stressful period in her son's life. Hopefully, and as the tenant indicates, things are getting better. The law does not require it, but it is the proper thing to do for Ms. J. and the other occupants to be patient and understanding. I would suggest to the tenant they have been.

Conclusion

The application to cancel the one month Notice to End Tenancy dated August 6, 2014 is allowed. The Notice is cancelled. The remainder of the tenant's application is dismissed. I make no order for recovery of the filing fee.

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: October 18, 2014

Residential Tenancy Branch