

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: ET, FF

Introduction

This hearing dealt with an application by the landlord for an early end to tenancy. Both parties participated in the conference call hearing and had opportunity to be heard.

At the outset of the hearing the tenants objected that they had not received the landlord's evidence until the evening before the hearing. The landlord acknowledged having served the evidence the night before the hearing but testified that it could not be served sooner because the tenants refused to answer their door. When asked whether they would have submitted any evidence in response to the landlord's evidence, the tenants replied that they simply wanted more time to go through the landlord's evidence in detail.

In determining whether to exclude evidence, the Residential Tenancy Rules of Procedure direct me to consider whether the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice. In this instance, the tenants did not indicate that they would have rebutted the landlord's evidence with any evidence of their own and were provided opportunity to verbally respond to that evidence. I am satisfied that there is no prejudice to the tenants by accepting the evidence and I have considered this evidence in my deliberations.

Issue(s) to be Decided

Does the landlord have grounds to end the tenancy early?

Background and Evidence

The tenancy began approximately 26 years ago. The rental unit is located on the third floor of a multi-storey apartment building. At the hearing the landlord made a number of accusations against the tenants and the tenants made an equal number of accusations

against the landlord, but for reasons which I will explain in my analysis, I only have considered the events of April 13 in determining whether the landlord has grounds to end this tenancy.

The landlord alleged that on April 13, both tenants took part in assaulting J.B., who acts as the assistant manager for the building. J.B. testified that at approximately 3:30 in the morning on that date the tenants came to his apartment door, which is also on the third floor, screaming obscenities and calling him names. J.B. further testified that the tenant D.S. hit his apartment door with a stick and kicked the door repeatedly until J.B. opened the door, at which time D.S. waved the stick at J.B. J.B. further testified that he held D.S. in an attempt to prevent him from using the stick as a weapon and D.S. passed the stick to C.S. who repeatedly hit J.B. on the head with it. M.M. who lives on the same floor as the tenants and J.B. appeared as a witness and testified that she heard a commotion outside her door which prompted her to look into the hallway through her peephole where she observed the tenants and J.B. outside the door of J.B.'s apartment. M.M. testified that she saw the tenant C.S. with a stick and she watched the fight as it progressed down the hallway towards the tenants' apartment. The landlords entered into evidence a letter from a tenant living on the second floor of the building who wrote that on April 13 she heard loud banging from directly above her, which is where J.B.'s apartment is situated.

The tenants testified that they did not instigate the altercation on April 13 but that they were awoken by their buzzer, indicating that someone wanted to be let in the front door. The tenants testified that they went downstairs to see who was there, found no one and when they returned to the third floor, J.B. was waiting for them with a stick. C.S. testified that J.B. dropped the stick and head-butted D.S. The tenants insisted that the altercation took place outside the door of the rental unit. D.S. corroborated C.S.'s testimony. The tenants insisted that M.M. could not see the door to their rental unit through her peephole as their door was in a corner and suggested that she may have lied in order to get a rent reduction. The tenants suggested that the landlord wanted to evict them because they had made an application for dispute resolution seeking a repair of their refrigerator and the landlord was taking this opportunity to retaliate. The tenants presented a witness, N.D., who did not witness the altercation and gave general

testimony as to D.S.'s good character.

Analysis

Section 56 of the Act provides that the landlord may apply to end a tenancy without serving a notice to end tenancy and by making an application for an early end to tenancy when the landlord has cause such as the tenant significantly interfering with or unreasonably disturbing another occupant or the landlord or seriously jeopardizing the health or safety or a lawful right or interest of the landlord or another occupant and when it would be unreasonable or unfair to the landlord or other occupants to wait for a one-month notice to end tenancy to take effect.

In this case, although the landlord alleged that the tenants have continually disturbed other tenants by making excessive noise and have repeatedly harassed J.B., none of those allegations create a situation in which it would be unreasonable or unfair for the landlord to wait for a one-month notice to end tenancy to take effect. Accordingly, the only allegation I have considered is the allegation that the tenants assaulted J.B. on April 13.

I find that the landlords have proven on the balance of probabilities that the tenants instigated the altercation with J.B. on April 13. I have arrived at this conclusion because although the tenants claim the altercation took place outside their rental unit, J.B. and two witnesses have testified that it took place outside of J.B.'s apartment. No evidence was provided to support the tenants' allegation that M.M. was lying in order to gain a rent reduction and no suggestion was made that the tenant on the second floor who wrote a letter complaining of the noise had any motivation to lie. I find that the altercation took place outside of J.B.'s apartment and as the corroborating evidence supports the position of J.B., where the testimony of J.B. and that of the tenants conflicts, I prefer the testimony of J.B. I find that the tenants instigated the argument with J.B. and find that J.B. was assaulted by the tenants.

I find that the actions of the tenants have significantly interfered with and unreasonably disturbed J.B. as both an occupant and an agent of the landlord and that the actions of the tenants have seriously jeopardized the safety of J.B. I find that it would be unfair to make the landlord to wait for a one-month notice to end tenancy to take effect and find

that the landlord has established the claim for an early end to tenancy.

I grant the landlord an order of possession effective May 31, 2009. The tenants must be served with the order of possession. If the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord is also entitled to recover the \$50.00 filing fee paid to bring this application. The landlord may deduct this amount from the tenants' security deposit, if a security deposit is held. Alternatively, a monetary order is enclosed which must be served on the tenants and may be enforced by filing the order in the Small Claims Court and enforcing the order as an order of that Court.

Conclusion

The landlord is granted an order of possession effective May 31, 2009 and a monetary order for \$50.00.

Dated May 13, 2009.