



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing was scheduled in response to the landlords' application for Dispute Resolution, in which the landlords have applied for an Order of Possession on an Early End to Tenancy and to recover the filing fee for the cost of the application from the tenant.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other and witnesses on their evidence. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Are the landlords entitled to end the tenancy early and gain an Order of Possession on the basis of their application to end the tenancy early pursuant to section 56 of the *Act*?

Background and Evidence

The landlords testify that this month to month tenancy started on March 01, 2011. Rent for this unit is \$800.00 per month and is due on the first day of each month in advance. The tenant did not dial into the conference call until 9.25 a.m.

The landlords testify that throughout the summer months this tenant has had a lot of traffic coming and going from her unit. The tenant will not answer her front door so these people go round to the tenant's back door and knock loudly to be let in. This disturbs other tenants and other tenants have expressed concerns about the amount of people coming across their patios. The landlord has provided five compliant letters. One letter from a neighbouring tenant, one letter from a previous tenant and three letters from neighbours living around the building.

The landlord testifies that the police have been called to the unit at least 12 times since this tenant moved in. No file numbers have been provided for these incidents. The tenant has music blaring till late at night, there has been a fight in her unit, the tenant's door has been damaged, the tenant has threatened the female landlord telling her she will "smash her head into a wall" and the landlords suspect the tenant is using drugs or dealing drugs out of her unit. The landlords state they are concerned for their safety and the safety of other tenants.

The landlords testify that another tenant called them to inform them that this tenant had stolen the landlords' pressure washer from the storage unit. The landlord testifies that he went to the storage unit and found the pressure washer was missing. The landlord states they called the police who came to talk to the tenant. No file number has been provided for this incident.

The landlords call their first witness (DB) who is another tenant residing in the building. The witness testifies that the tenant has a lot of people coming and going into her unit at night. These people bang so loudly it wakes the witness up and she thinks they are banging on her door. The witness testifies that she has a lot of traffic crossing her patio going to the tenants unit and the police have attended at the tenants unit three times around Christmas and New year.

The tenant declines to cross examine this witness.

The landlords call their second witness (CL) who is a neighbouring tenant of this tenant. The witness testifies that the police came to the tenants unit three or four days in a row. One time after the tenant's music was up very loud, and on December 21, 2011 when the police arrived and were at the tenant's door shouting to be let in or they would get a warrant and bring in the dogs. This was the same night the tenant's door was kicked in and the witness testifies that she does not know who did this damage to the door. The witness testifies that the tenant always has a lot of people coming and going from her unit.

The tenant cross examines this witness and asks how many people does she see coming to her unit and how many times has the tenant asked the witness to keep the music down and how late does the witnesses child have her music loud. The tenant also asks the witness what dates the police were at her unit.

The witness replies that she does not know how many people come and go as she only hears people knocking at the tenant's door. The witness states the tenant has only asked the witness one time to turn the music down and agrees the witnesses daughter has played loud music up till 01.00 a.m. a few times but has turned it down after a text message from the landlord. The witness states that she did not write down the dates that the police came to the tenants unit but remembers it being on December 21, 2011, the next day and at least one other day.

The tenant testifies that she was sick throughout August and September, 2011 and had put a note on her door telling her friends that the door bell does not work so they should come around the back. The tenant testifies that she has had to ask her friends not to come around anymore due to the complaints and the landlords' suspicions. The tenant testifies that she had notified the landlord that her bell did not work.

The tenant states her neighbour also has a lot of people coming to her door for her daughter and other neighbours could think these people were coming to the tenants unit.

The tenant testifies that she did not threaten the landlord and simply asked the landlord to go back into her unit and mind her own business when the landlord was taking down the licence plate's numbers of the tenants friends. The tenant testifies her door was already broken when she moved into her unit and the female landlord saw the tenant using her shoe to bang a metal plate onto the door so she could close it. The tenant states the landlord told her the neighbours were complaining about banging noise and the tenant states this is because she has to bang her door shut. The tenant states the male landlord called her about the banging and states the female landlord should have defended her as she was aware why the tenant was banging.

The tenant states her and her boyfriend had drinks with the landlord where the male landlord said he would fix her door however he failed to do this but later said the tenant's friends could fix the door.

The tenant testifies that on the night of December 21, 2011 a fight did break out in her unit when someone started to pick on the tenant. The tenant states this person was asked to leave her unit. He left and then tried to get back into the unit. When the tenant refused him access he flung the tenant across the room causing her harm. The tenant states she does not know who called the police but they arrived and kicked the tenant's door in. The tenants states the police let them go when they realized that it was not the tenants fault.

The tenant testifies that when she was sick in the summer and had the note on her door an undercover narcotics police officer came to her door and said the note on the tenants door said that 'the tenant had no drugs left and to come back later'. The tenant states she showed the officer the original note which did not say that. The tenant states this officer apologised and informed the tenant that they had received complaints about the

tenant's friends. The tenant testifies that she is not well known to the police as suggested by the landlords and has never been charged with drug dealing.

The tenant agrees that a Police Officer questioned her about the whereabouts of the landlords' pressure washer. The tenant testifies that she has no knowledge of the pressure washer and could not lift it or move it as she does not have a vehicle.

Analysis

Section 56(2) of the *Act* authorizes me to end a tenancy earlier than the tenancy would end if Notice to End Tenancy were given under section 47 of the *Act* and grant an Order of Possession for the rental unit if the tenant or persons permitted on the residential property by the tenant has done any of the following:

- (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;
- (iii) put the landlord's property at significant risk;
- (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlord's property,
 - (B) 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
 - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (v) caused extraordinary damage to the residential property, and

(b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

In this matter, the landlords have the burden of proof and must show (on a balance of probabilities) that grounds exist to end the tenancy early. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. The landlord has provided two witnesses to the disturbances and some compliant letters that a large number of people use the tenant's back door to gain entry to the tenants unit. However the landlords suspicions that the tenant has been dealing drugs from her unit or that any other illegal activity has taken place in the tenants unit has not been corroborated. The landlords have provided no police file numbers and much of their evidence and testimony is based on hearsay.

The landlords have provided no corroborating evidence that the tenant threatened the female landlord and no evidence that the tenant has stolen the landlords' pressure washer. The tenant does however agree that the police did damage her door but claims no responsibility for this damage. Therefore, in the absence of any corroborating evidence, I find that the landlord has provided insufficient evidence, pursuant to section 56 of the *Act*, to show that it would be unreasonable or unfair to the landlord or other occupants of the residential property to wait for a Notice to End Tenancy under section 47 of the *Act* to take effect and the tenancy may continue at this time.

Conclusion

The landlords' application for an Early End To Tenancy is dismissed without leave to reapply.

As the landlord has not been successful with their application they must bear the cost of filing their own application.

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: January 17, 2012.

Residential Tenancy Branch