



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with a landlord's application for an early end of tenancy and an Order of Possession under section 56 of the Act. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The tenant's roommate was present at the commencement of the hearing. As the landlord objected to his presence he was excluded from the hearing until called to testify as a witness. The tenant's roommate was called to testify as a witness near the end of the hearing after both parties had presented their respective positions.

Issue(s) to be Decided

Has the landlord established that the tenancy should end early and the landlord be provided with an Order of Possession under section 56 of the Act?

Background and Evidence

Although I was not provided a copy of a written tenancy agreement, both parties agreed that one exists and that the tenancy commenced January 1, 2013 for a fixed term set to expire December 1, 2013. The tenant is required to pay rent of \$2,100.00 on the 1st day of every month.

The residential property is a 2 acre rural property that has a house, a barn, a horse paddock and riding ring. The parties were in dispute as to whether the tenant is entitled to use the riding ring and other parts of the residential property under the terms of tenancy. I informed both parties that this issue may need to be resolved by way of a future dispute resolution hearing. Nevertheless, after hearing from both parties it became abundantly clear to me that the dispute over the tenant's right to use the

property since the landlord returned from being out of the country has fueled antagonistic behaviour on both parts.

In filing this application, the landlord indicated that she seeks an early end of tenancy due to “damage and abuse.”

I was provided consistent or undisputed testimony regarding the following sequence of events leading up to this hearing:

- The landlord rented the property to the tenant because she and her family were moving out of the country to attend grad school.
- Originally the rental unit was to be occupied by the tenant and his girlfriend but the tenant and his girlfriend broke up shortly before the tenancy commenced and only the tenant moved into the rental unit with his dogs.
- The tenant often works out of town for a couple of weeks at a time and had a friend (herein referred to by initials BB) stay at the house to look after the tenant's dogs.
- BB eventually moved into the house after separating from his spouse.
- Due to unforeseen personal circumstances the landlord had to return to Canada and withdrew from grad school.
- The landlord entered into an exclusive listing to sell the house and was staying with her parents upon returning to Canada initially.
- Shortly thereafter the landlord issued two Notices to End to End Tenancy to the tenant:
 - The landlord issued a Notice to End Tenancy for landlord's use of property despite the parties having entered into a fixed term tenancy. The tenant's offer to end the tenancy early in exchange for compensation was rejected by the landlord.
 - The landlord issued a 1 Month Notice to End Tenancy for Cause on June 3, 2013 on the basis the tenant had “sublet” the property without obtaining the landlord's consent.
 - The tenant filed to dispute the Notices to End Tenancy and the parties have a hearing scheduled for June 27, 2013.
- The landlord brought horses on to the property and placed a trailer on the property on June 5, 2013. The landlord and her family now live in the trailer.

During the hearing, the landlord cited the following reasons for seeking an early end of tenancy:

1. In retaliation for receiving the 1 Month Notice the tenant began riding his ATV in the riding ring. The tenant was given 7 days to repair the damage, which he did not, and the landlord proceeded to replace and re-roll the sand at a cost of \$973.00.
2. The landlord suspects the tenant parked his 1 tonne truck on the septic field. The tenant was given 7 days to have the septic system inspected to determine whether any damage was done, which the tenant did not do. The landlord has determined that it will cost over \$800.00 for her to have an inspection done.
3. The tenant and/or BB have left the unit in filthy condition, complete with dog urine and feces on the floor, during a showing to prospective buyer.
4. BB refused the landlord's realtor entry into the unit despite serving a Notice of Entry that included that date.
5. BB made threats against the landlord on June 8, 2013 causing the landlord to fear for her safety and inhibit her ability to enter the house. BB was arrested and has been placed under an "undertaking" to have no contact with the landlord or her husband and refrain from going on the property nearest the landlord's trailer. However, BB continues to antagonize the landlord by yelling over the balcony "I love you". The landlord acknowledged she has not informed the police of such behaviour since BB has had his children present when he makes such statements.
6. BB has also played loud music and honked his car horn to aggravate the landlord while she is living in the trailer.

The tenant and/or BB provided the following responses:

1. The tenant has had an ATV at the property since the beginning of the tenancy, which the landlord knew about, and he used to ride it all over the property. The tenant had been provided use of the riding ring under his tenancy. The landlord had even suggested he could use it for his dogs. Horses and animals also cause the riding ring to require raking and re-rolling from time to time. The tenant has until the end of tenancy to rake out and repair the riding ring. The tenant disagreed with the landlord's demands for him to re-roll the riding ring within 7 days and it was her choice to go ahead and hire somebody to do it.
2. The tenant is familiar with house construction and did not park on the septic field. The tenant acknowledged parking on the grass with an intention of washing his truck.
3. The tenant received a text message from the landlord on May 28, 2013 thanking BB for co-operating with a showing and making the house look good. There was not dog urine or feces on the floors although the house was messy and cluttered during a subsequent showing.

4. BB was unaware that the realtor was coming until running into the realtor in the driveway. At that time BB was heading out for an appointment so BB offered to let the realtor in later that day or the following week. The realtor did not contact him again to make an arrangement.
5. BB was arrested based upon the landlord's statements to police, made a day after the incident, and without the benefit of an investigation. An investigation is on-going but charges have not been laid. The landlord is trying to harass the tenant and BB into leaving the property because the landlord wants to move into the house and does not want to pay the tenant compensation. BB does not yell "I love you" to the landlord from the balcony. Rather, he is a loud person and says "I love you" as part of playing with his children. Although the landlord claims to be fearful of BB she continues to take pictures of him and/or his property and post documents on the door of the rental unit.
6. The tenant and BB enjoyed use of the property exclusively before the landlord moved into a trailer on the property and the tenant and BB have suffered a loss of use and privacy as a result.

Documentary evidence provided by the landlord included copies of: the landlord's statement to the police on June 9, 2013; the "undertaking"; a receipt for repairs to the riding ring dated June 11, 2013; and emails from the landlord's realtor, a prospective buyer, and neighbour.

Analysis

Section 56(2) of the Act permits a Dispute Resolution Officer to make an order to end the tenancy on a date that is earlier than the effective date on a 1 Month Notice to End Tenancy for Cause had one been issued. In order to grant an order to end the tenancy early I must be satisfied that:

- (a) the tenant or a person 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.

[my emphasis added]

The landlord bears the burden to prove the tenant, or a person permitted on the property by the tenant, has acted in such a way as to warrant an order to end the tenancy for cause and that it would be unreasonable to wait for a 1 Month Notice to take effect. The burden is high as this provision is intended to apply in the most severe of circumstances.

Much of the evidence presented to me consisted of disputed testimony and different versions of events. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

Upon consideration of everything presented to me, I provide the following findings and reasons with respect each of the reasons cited by the landlord during the hearing:

1. The landlord submitted the tenant rode his ATV in the riding ring, causing damage to it, in retaliation for receiving the 1 Month Notice; whereas, the tenant submitted that he has rode the ATV all over the property throughout the tenancy, suggesting his actions were not retaliatory but part of his right to use and enjoyment of the property. In reading the neighbour's statement submitted as evidence, I note the neighbour refers to two occasions where the tenant was riding his ATV in the riding ring, including a date that preceded June 3, 2013. Thus, I find the landlord's documentary evidence to be inconsistent with her submission that the tenant acting retaliatory. Nor am I satisfied by the evidence before me that the effects on the riding ring sand constitute significant damage to the property.

2. I was provided disputed verbal testimony that the tenant parked his large truck on the septic field. In the absence of further evidence, I find the disputed verbal testimony to be insufficient to conclude the tenant parked on the septic field and either put the property at significant risk or caused significant damage.
3. I was provided disputed allegations that the floors of the rental unit were left covered in dog urine and feces. The landlord did not witness this herself but relied upon a description by a prospective purchaser. In support of the landlord's allegations I was provided a copy of email purportedly authored by the prospective buyer of the property. Without the testimony of the prospective buyer or other witnesses, and in the absence of other evidence such as photographs, I find the disputed evidence is insufficient to meet the landlord's burden of proof.
4. The landlord asserted that the tenant was served with a proper Notice of Entry prior to the realtor's visit on June 15, 2013. A Notice of Entry must include the date, time and reason for the entry. I was not provided a copy of the Notice of Entry given by the landlord and I am unable to determine that the tenant was served with a valid Notice of Entry indicating the time and the purpose of the entry on June 15, 2013. Thus, I find I am unable to conclude the tenant or BB refused entry despite a valid Notice of Entry being served.

In support of the landlord's position that BB refused entry I was provided a copy of an email from the landlord's realtor. In the email he indicates that he was asked by the landlord at 11:00 am on June 15, 2013 to ask BB if he could enter the house that same day in order to conduct an open house. I find this a peculiar request on part of the landlord as open houses are usually scheduled days or weeks in advance. I find the realtor's statements that BB was outside and in his truck when the realtor showed up to be consistent with BB's testimony that he was heading out for an appointment when the realtor showed up. The realtor makes no mention that the open house was pre-arranged or scheduled more than a few hours in advance which leads me to prefer BB's testimony that he was unaware of an entry for such a purpose. Further, I find the realtor's statements are consistent with BB's testimony that BB offered to arrange a time for the following day or the following week. Thus, I find the landlord's evidence indicates that BB was acting cooperatively with the realtor in the circumstances.

5. Threats of physical violence are the most serious of allegations made by the landlord in this case. The allegations are currently under investigation by police but charges have not been laid. As I understand it an “undertaking” is standard procedure where such serious allegations are made and used to avoid future disputes between the parties while the allegations are investigated. While the landlord asserts that she fears for her safety, I find the evidence does not support her assertions considering:

- a. Charges against BB have not been recommended or laid as at the date of the hearing;
- b. The undertaking does not prohibit BB from living at or being in the house or other areas of the property except for the area immediate to the landlord’s trailer and I was not provided evidence he has violated this condition;
- c. In the landlord’s statement to the police she asserts that BB had just told her he hoped she would die, how shocked she was, and then a minute later she stood on the property and watered flowers.
- d. The landlord has not been inhibited from posting documents to the door of the rental unit or taking pictures of the rental unit, the tenant and/or BB or their personal property; and,
- e. BB’s statements of “I love you” are said while his children are present and BB’s explanation for such statements is plausible.

Furthermore, considering the sequence of events that have transpired in the days prior to this Application for Dispute Resolution I find the tenant’s position that the landlord is attempting to harass the tenant from the property may have merit.

6. The playing of loud music and other loud noises is surely annoying to neighbours and where the noise levels violate noise by-laws the neighbour is at liberty to make a by-law complaint or phone the police. Repeated and on-going noise disturbance of another occupant living on the property may be a basis to end a tenancy for cause. In this case, the landlord asserts that she is disturbed by loud music and noise caused by the tenant and/or BB; however, it is in dispute as to whether the landlord has the right to live on the property. When I consider the tenant and BB had exclusive use of the property up until the landlord decided to move into a trailer on the property I am not convinced that the landlord has not placed herself in the situation.

In light of the above, I find the landlord has not provided sufficient grounds to end the tenancy early under section 56 of the Act and I dismiss the landlord's request for an Order of Possession. Accordingly, the tenancy continues at this time.

In an effort to defuse future disputes between the parties, I strongly suggest the parties resolve the dispute surrounding the tenant's right to use and enjoy the residential property as agreed upon, as soon as possible, and until such time that dispute is resolved, I suggest the following to the tenant:

- a) Ensure cars and trucks are parked in areas designed for parking such as: the driveway or other pre-existing parking pads, and the like.
- b) Refrain from riding any motorized vehicle or equipment in the riding ring.
- c) Ensure the rental unit is maintained to a reasonable level of health, cleanliness and sanitary standards.
- d) Refrain from creating unreasonable disturbances including frequent and/or on-going loud noises.

The tenant is responsible for ensuring any person permitted on the property by the tenant, namely BB, conducts himself so as to not violate the Act and is aware of the above suggestions.

I also suggest to the landlord that entry into the rental unit be for to genuine showings to prospective purchasers and/or other lawful purposes by way of a proper Notice of Entry having regard for the tenant's right to quiet enjoyment of the property.

Conclusion

The landlord's application for an early end of tenancy and Order of Possession under section 56 of the Act has been dismissed.

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: June 25, 2013

Residential Tenancy Branch

