



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC Housing Management Commission
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution, seeking an order to end the tenancy early and to receive an order of possession.

Five agents for the landlord and one agent for the tenant attended the hearing. The parties were provided the opportunity to provide affirmed testimony and were provided the opportunity to present evidence submitted in accordance with the rules of procedure and makes submissions to me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. Agent GM testified that the Notice of Hearing was served on the tenant via registered mail on July 30, 2013. A tracking number was submitted in evidence. According to agent GM, the registered mail package was tracked online which confirmed that the registered mail package which contained the landlord's evidence was successfully delivered on August 6, 2013 when the tenant signed for the registered mail package. Therefore, I find the tenant was duly served with the Notice of Hearing and the landlord's evidence in accordance with the *Act*. According to the tenant's agent, the tenant slept in and had not attended her office to participate in the hearing as a result.

Issue to be Decided

- Is the landlord entitled to end the tenancy early and obtain an order of possession?

Background and Evidence

A month to month tenancy began April 1, 2010. Monthly rent in the amount of \$304.00 is due on the first day of each month pursuant to clause 9 of the tenancy agreement which calculates rent at 30% of the tenant's and occupant's gross monthly income. No security deposit or pet damage deposit was paid by the tenant.

The landlord has applied for an order of possession to end the tenancy early based on the tenant's behaviour escalating since being issued a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") on July 10, 2013. The effective vacancy date of the 1 Month Notice is August 31, 2013.

The landlord submitted 68 pages of evidence, however, only pages 67 and 68 are dated after July 10, 2013 which is the date specified by the landlord when the tenant's behaviour began "escalating".

On page 67 of the landlord's evidence, the landlord has submitted a copy of an e-mail. In the subject line of the e-mail it references an "incident report" for the tenant's apartment. Agent SK confirmed that the landlord did not submit a copy of the incident report in evidence. The e-mail refers to another tenant living in the building with the first initial "K". Tenant "K" was not available to testify during the hearing. The e-mail alleges that tenant "K" was approached by the tenant and the tenant allegedly told tenant "K" that he was "going to trash" landlord agent MK's truck. Agent SK confirmed that she did not have further evidence or testimony to provide regarding page 67 of their evidence.

On page 68 of the landlord's evidence, the landlord submitted a complaint form from another tenant living in the building, DI. The complaint form from tenant DI is dated July 16, 2013 and makes reference to the tenant washing his car in the parking lot with music blasting, wandering through the building at all hours of the night, wandering around the back yard all hours of the night, climbing over the tenant's own balcony, and entering the apartment of tenant "K" and "taking things from her fridge". There are no times or dates in relation to the allegations related to the tenant entering the apartment of tenant "K". Tenant DI was not available to testify during the hearing.

Agent GM referenced page 33 of the landlord's evidence which is dated August 17, 2011.

Analysis

Based on the documentary evidence and the testimony during the hearing and on a balance of probabilities, I find the following.

Section 56 of the *Act* indicates:

56 (1) A landlord may make an application for dispute resolution to request an order

(a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and

(b) granting the landlord an order of possession in respect of the rental unit.

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession **only if satisfied, in the case of a landlord's application,**

(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.

[emphasis added]

The burden of proof is on the landlord to prove 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 to take effect. The 1 Month Notice effective vacancy date is August 31, 2013 which is seventeen days from the date of this hearing.

Only two of the sixty-eight pages of evidence submitted by the landlord are relevant to the landlord's claim that the tenant's behaviour allegedly has "escalated" since being served with the 1 Month Notice on July 10, 2013. Evidence which is dated prior to July 10, 2013, is therefore moot to the application of the landlord. Only pages 67 and 68 of the landlord's evidence are dated after July 10, 2013.

Regarding page 67 of the landlord's evidence, the landlord submitted a copy of an e-mail. The landlord failed to provide a copy of the "incident report" referred to in the e-mail. Tenant "K" was not available to testify regarding a statement she allegedly made to the tenant about "going to trash" landlord agent MK's truck. The e-mail refers to another tenant living in the building with the first initial "K". Tenant "K" was not available to testify during the hearing. The e-mail alleges that tenant "K" was approached by the tenant and the tenant allegedly told tenant "K" that he was "going to trash" landlord agent MK's truck. Agent SK confirmed that she did not have further evidence or testimony to provide regarding page 67 of their evidence.

Regarding page 68 of the landlord's evidence, the landlord submitted a complaint form from another tenant living in the building, DI. The complaint form from tenant DI is dated July 16, 2013 and makes reference to the tenant washing his car in the parking lot with music blasting, wandering through the building at all hours of the night, wandering around the back yard all hours of the night, climbing over the tenant's own balcony, and entering the apartment of tenant "K" and "taking things from her fridge". There are no times or dates in relation to the allegations related to the tenant entering the apartment of tenant "K". Tenant DI was not available to testify during the hearing.

Based on the above, **I find** that the landlord has provided insufficient evidence to support that the tenant's behaviour has been "escalating" since the 1 Month Notice was issued on July 10, 2013.

At the very least, I would expect the landlord to have submitted a copy of the incident report referred to in the landlord's evidence on page 67, and to have arranged for witnesses to testify during the hearing, or have detailed statements from witnesses including dates and times of alleged incidents to support the landlord's allegations.

I find that the landlords have failed to meet the burden of proof in proving that the tenancy should end early, and that it would be unreasonable and unfair to the landlord or the other occupants to wait for a notice to end tenancy under section 47 of the *Act*, the effective date which is only seventeen days from the date of this hearing and Decision. Therefore, **I dismiss** the landlords' application due to insufficient evidence.

Conclusion

The landlord's application is dismissed due to insufficient evidence.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: August 14, 2013

Residential Tenancy Branch

