



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order of Possession on an Early End to Tenancy.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on September 10, 2013. Canada Post tracking numbers were provided by the landlords in sworn testimony. The tenants are deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered

Issue(s) to be Decided

Are the landlords entitled to end the tenancy early and gain an Order of Possession on the basis of this 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 June 01, 2013. Rent for this unit, in this fourplex, is \$1,450.00 per month and is due on the 1st day of each month.

The landlord AB testifies that the tenants allowed someone else to move into the unit within the first month of their tenancy and that week the landlords had their first occurrence with loud noise and music starting at 10.30 on a weeknight and going on until 1.00 a.m. The other tenants living in the fourplex did not complain to the landlords straight away. In August the landlord AB drove by the unit and saw so many cars parked in the back which made it difficult for anyone to drive down the lane. Some of these cars also occupied the other tenants' spaces. These tenants had been allowed to park their motor bikes, an ATV and a utility trailer at the property. Later the landlord asked the tenants to move the extra vehicles and the landlord went home but received a phone call from one of the other tenants complaining that he had had to park in front of another tenant's car due to excessive vehicles parked at the property. The tenants were having a large party at their unit so the landlord had to go and tell them to move vehicles again by this time it was 11.35 p.m. and the party continued to 1.00 a.m.

On September 02, 2013 the tenant living below these tenants called at 8.00 a.m. to complain that the tenants were having a party again which had started at 5.00 a.m. that morning. The landlord went to see the tenants but the noise was so loud that the tenants could not hear the landlord ringing the door bell or knocking on the door. The landlord agrees that he then entered the unit through an unlocked door and found the tenants partying with their guest and another person. The landlord testifies that he had to raise his voice to be heard and asked the tenants what was going on and did they not have any respect for the other tenants living around them. The tenants' guests became argumentative with the landlord.

The landlord testifies that he has had complaints from other tenants that there has been fighting and yelling from the tenants unit with the tenants and their guests.

On September 08, 2013 the landlord testifies that he received a phone call from the tenant living below these tenants at approximately 2.30 p.m. This tenant said the tenants smoke alarm had been going off and he thought that no one was at home. The landlord called the female tenant on her cell phone but received no answer. The landlord became worried that there was a fire so he asked the other tenant to get the ladder and look into the tenants' bathroom window and see if he could smell smoke. The tenant called the landlord back and said he could not smell smoke but there was a smell of intense heat. The landlord testifies that he kept trying to call the female tenants cell phone but could not get through and her mail box was full so a message could not be left.

The landlord testifies that by 3.15 p.m. the landlord had arrived at the unit and asked the downstairs tenant to come upstairs with the landlord. The landlord testifies that by this time the smoke alarm had stopped and the landlord suspected that the batteries had died after ringing for so long. The landlord testifies that he knocked on the door and rang the bell calling out the tenants' names. No one answered so the landlord opened the door suspecting some kind of an emergency situation. When they entered the unit they could smell burning iron. They went into the kitchen and saw a burner on the stove on high with an empty burning pot over it. The landlord immediately turned off the burner and put the pot in the sink and ran water on it. The landlord again started to call the tenants names and then one of the tenants shouted from the bedroom "Go away". The landlord testifies that he yelled at the tenant and told them that they had left the stove on with a pot burning and asked the tenant if they had heard the smoke alarm or the phone. The landlord testifies that the tenant replied that they were sleeping and didn't hear anything.

The landlord testifies that he told the tenants that they could no longer live there because they are endangering the lives of the other tenants. The landlord seeks an

Order to end the tenancy early and requests that the order is effective on October 15, 2013 to allow the tenants' time to vacate the rental unit.

The landlord has provided signed witness statements from the other tenants residing in the fourplex. These statements all state that these tenants have disturbed the other tenants with loud music and partying since they have lived there. The other tenants also complain about foul language, cars being parked in their spaces, loud music, loud talking, and drinking. One other tenant has stated that when the landlord came to ask the tenants to turn their music down they did until the landlord drove away and then turned it back up again.

The other tenants have voiced concerns to the landlord and in their written statements about their fears that these tenants may cause a fire in the unit after sleeping through the smoke alarm when they left a pot burning on the stove. One of the other tenants also complains about these tenants' child and the children of guests who are allowed to pay outside the unit till late at night while the tenants party inside. The children are loud and disturb the other tenants. One of the other tenants has a young baby who is also disturbed by these tenants' loud noise and actions.

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.

As the tenants have not appeared at the hearing today to dispute the landlords evidence and testimony I find that the landlords have provided sufficient evidence, pursuant to section 56 of the *Act*, to show that the tenants or persons permitted on the property by the tenants have significantly interfered with or unreasonable disturbed other occupants. I find the landlord has provided sufficient evidence to show that the tenants have seriously jeopardized the health or safety or a lawful right or interest of the landlord and other occupants by being unaware of the smoke alarm going off in their unit while a pan burnt on the stove. I have serious concerns about the tenants leaving an unattended pot on the stove but more concerns over their inability to hear the smoke alarm or phone while the landlord tried to alert the tenants. I find this would put the landlords property and other occupants at serious risk should a fire occur in the tenants unit. I further find from the evidence presented that the tenants have adversely affected or are likely to adversely affect the quiet enjoyment, security, safety or physical well-being of the landlord and other occupants through their actions in playing loud music, yelling, swearing and partying in the early hours of the morning and late at night.

Due to the undisputed testimony and documentary evidence listed above I am satisfied, that it would be unreasonable and unfair for the landlords to wait for a One Month Notice to End Tenancy under section 47 of the *Act* to take effect and allow the landlords application for an early end to the tenancy.

Conclusion

The landlords' application for an Order to End Tenancy Early is granted. An Order of Possession has been issued to the landlords to take effect **on October 15, 2013**. A copy of this Order must be served on the tenants. The Order of possession is enforceable through the Supreme Court of British Columbia.

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: September 27, 2013

Residential Tenancy Branch

