



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ET and FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession, for an early end to the tenancy, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord and the Tenant were both represented at this hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Neither party submitted documentary evidence.

Two witnesses dialed into the teleconference at the start of the hearing on behalf of the Landlord. These witnesses were excluded from the hearing at the outset and the Landlord was advised that he could call these witnesses when, and if, their evidence became relevant. The Landlord did not ask to call these witnesses during the hearing, although he was given the opportunity to do so at the end of the hearing.

It does not appear that English is the Landlord's first language and I experienced significant difficulty communicating with him during the hearing.

I am not satisfied that the Landlord understood some of the questions that were being asked of him during the hearing. For example, on four occasions he was asked to refer to the second page of the One Month Notice to End Tenancy that he served to the Tenant and to explain which reasons for ending the tenancy were checked on that Notice. On each occasion he provided details contained on the second page of the Application for Dispute Resolution, in spite of the difference between the two forms being explained to him.

On two occasions I asked the Landlord when this tenancy began and he informed me that it began on January 21, 2014. On the third occasion he stated that it began about five months ago.

I am not satisfied that the Landlord understood some of the information that I provided to him during the hearing. For example, on three occasions I explained to him that I was dismissing his application for an Order of Possession; that the Tenant would not be required to move out at this time; and that the Landlord would be able to argue the merits of the One Month Notice to End Tenancy at the hearing that had been scheduled for March 05, 2014. On each occasion I asked him if he understood what he had been told and he responded by asking when the Tenant would be moving out.

Issue(s) to be Decided

Does the Landlord have grounds to end this tenancy early and is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord stated that this tenancy began about five months ago and the Tenant stated that it began on August 01, 2013. The parties agree that the rent of \$450.00 is due by the first day of each month.

The Landlord stated that on January 06, 2014 he provided a police officer with a One Month Notice to End Tenancy for Cause and that the police officer personally served it to the Tenant on his behalf. He stated that the Notice to End Tenancy declared that the Tenant must vacate the rental unit by February 06, 2014. He was unable to explain the reasons for ending the tenancy that were cited on the second page of the Notice to End Tenancy.

The Tenant stated that on January 07, 2014 he located a One Month Notice to End Tenancy for Cause on the door of his rental unit, which declared that he must vacate the rental unit by January 15, 2014. He stated that he does not have the Notice to End Tenancy with him but he believes the Notice declared that his tenancy was ending because he had been disturbing the peace. The Tenant stated that he has disputed this Notice and that a hearing into that matter has been scheduled for March 05, 2014.

The Landlord stated that on January 22, 2014 he personally served the Tenant with a Ten Day Notice to End Tenancy, which declared that the Tenant must vacate the rental unit by February 02, 2014.

The Tenant stated that on January 22, 2014 the Landlord personally served him with a Ten Day Notice to End Tenancy, which declared that the Tenant must vacate the rental unit by January 22, 2014. The Tenant stated that he has not yet disputed this Notice to End Tenancy and he has not yet paid the rent, as he understood that he could pay the rent within ten days of receiving this Notice.

The Landlord declared that he wishes to end this tenancy early, in part, because the Tenant has not paid his rent.

The Landlord stated that he wishes to end this tenancy, in part, because the Tenant smokes marijuana in the rental unit; that the smoke enters the Landlord's rental unit; and that the smoke aggravates the Landlord's son's asthma.

The Tenant stated that he normally goes outside when he smokes marijuana but whenever he smokes it inside the rental unit he smokes it inside his bathroom while the bathroom fan is operating.

The Landlord stated that he wishes to end this tenancy, in part, because the Tenant bangs on the walls with a hockey stick, which is damaging the walls, and that he has done so every day in January of 2014.

The Tenant stated that he has banged on the ceiling in an effort to have the Landlord reduce the noise levels in the Landlord's residence; that he banged on the ceiling on one or two occasions in January of 2014; that he has not banged on the ceiling since January 07, 2014; and that the banging has not damaged the rental unit.

The Landlord stated that he wishes to end this tenancy, in part, because on almost every day in January the Tenant has banged on his door; that on each of those days the Landlord has refused to answer the door but has opened a window to speak with the Tenant; and that on each of those days the Tenant has yelled at him and used profanities.

The Tenant stated that the only day in January that he went to the Landlord's door was on January 07, 2013; that he went to the door to speak to the Landlord about the incorrect effective date of the One Month Notice to End Tenancy; that he did not yell or swear at the Landlord on that occasion; that the Landlord called the police to report this incident; and that the police attended and advised him to have no further contact with the Landlord.

Analysis

Section 56(1) of the *Residential Tenancy Act (Act)* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the *Act* and that the Landlord may apply for an Order of Possession for the rental unit.

Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property

- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

As nonpayment of rent is not one of the grounds for ending the tenancy listed in section 56(2)(a) of the *Act*, I find that whether or not rent has been paid is not relevant to my decision in this matter.

Section 56(2)(b) if the *Act* authorizes me to grant an Order of Possession in the circumstances outlined in section 56(2)(a) of the *Act* only if 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 to take effect.

In some circumstances, smoking marijuana inside a rental unit could be cause to end a tenancy, particularly if there was a clause in the tenancy agreement prohibiting smoking inside the rental unit and the Landlord could establish that the smoke was having a negative impact on the health of another occupant of the residential complex. In the absence of medical evidence that shows the marijuana smoke is having a serious impact on the health of the Landlord's son, I find that it would not be unreasonable for the Landlord to attempt to end this tenancy in accordance with section 47 of the *Act*.

As the Landlord has submitted no evidence to corroborate his claim that the Tenant has damaged the rental unit by banging on the walls/ceiling, and the Tenant denies damaging the rental unit in this manner, I find that the Landlord has failed to establish that the Tenant has caused extraordinary damage to the residential property. I am, therefore, unable to end the tenancy early on the basis of this allegation.

In some circumstances, banging on ceilings and walls could be cause to end a tenancy. I find that the Landlord has submitted insufficient evidence, however, to establish that this disturbance is so serious that it would be 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 of the *Act* to take effect.

In reaching this conclusion, I was influenced, in part, by the fact that the parties do not agree on the frequency of the disturbances. I am hesitant to rely on the testimony of the Landlord in this regard because of the Landlord's tendency to provide inaccurate information. I am simply not convinced that the Landlord intended to declare that this particular disturbance occurred every day in January. In the absence of evidence that clearly corroborates the Landlord's testimony that this disturbance happens on a daily basis, I am not satisfied the circumstances warrant ending this tenancy earlier than it could be ended in accordance with section 47 of the *Act*.

In some circumstances, yelling and swearing at a Landlord could be cause to end a tenancy. I find that the Landlord has submitted insufficient evidence, however, to establish that the Tenant has created a disturbance by knocking on his door, yelling, and swearing on almost every day in January. I find that the Landlord has failed to establish that such disturbances have occur with such frequency that 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 of the *Act* to take effect.

In reaching this conclusion, I was influenced, in part, by the fact that the parties do not agree on the frequency or the nature of these disturbances. I am hesitant to rely on the testimony of the Landlord in this regard because of the Landlord's tendency to provide inaccurate information. I am simply not convinced that the Landlord intended to declare that this particular disturbance occurred on almost every day in January. In the absence of evidence that clearly corroborates the Landlord's testimony that this disturbance happens on a regular basis, I am not satisfied the circumstances warrant ending this tenancy earlier than it could be ended in accordance with section 47 of the *Act*.

While considering the Landlord's testimony regarding the banging on the walls/ceiling and the yelling/swearing, I was influenced, to some degree, by *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, in which the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In the circumstances before me, I find that it is more reasonable to believe the Tenant's testimony regarding the frequency of the disturbances. While it is entirely possible that a tenant would bang on a ceiling every night, it is more probable that the incidents would be more sporadic. While it is possible that on almost every day in January the Tenant appeared at the Landlord's door, I find it highly likely that on each of those

occasions the Landlord opened his window, at which point the Tenant swore at him. The version of events provided by the Landlord, in these circumstances is, in my view, considerably less probable.

I note that the testimony provided by the Tenant was consistent and forthright throughout the hearing and I could find no reason to disregard his testimony.

I find that the Landlord has submitted insufficient evidence to establish that this tenancy end early, pursuant to section 56 of the *Act*, and I dismiss the Landlord's application for an Order of Possession. As the Landlord has failed to establish the merit of the Application for Dispute Resolution, I also dismiss the application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

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 30, 2014

Residential Tenancy Branch

