



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 receive an order of possession.

Both parties appeared at the hearing, although as explained below, the Tenants appeared late. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. One witness was excluded, as described below.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issues

The Tenants appeared late after the hearing had just begun with the affirmation of the Agent for the Landlord. One of the Tenants asked if he could put the other participants on his speakerphone and was allowed to do so. When the speakerphone was turned on, I asked the parties listening to please introduce themselves. The other two Tenants introduced themselves. They were affirmed and the hearing process was explained, as described above.

During the Tenants' reply to the Landlord's claims, the female Tenant wanted a previously un-introduced witness to testify. The Landlord interrupted to explain the witness was the female Tenant's boyfriend.

I explained to the Tenants and the unidentified witness that I was unable to hear this witness' testimony, as the witness had not been introduced at the outset of the hearing

and had heard all the proceedings up to being asked to give testimony. I explained that the witness had not been identified by the Tenants as a person who would testify and therefore, I would not hear from the witness. I note the Tenants argued that they were not asked to introduce any witnesses; however, I find they had the opportunity at the outset of the hearing to introduce all the people on speakerphone, but failed to do so.

I also note the female Tenant had to be cautioned twice, as the unidentified witness could be heard coaching the Tenant by whispering to her. At another point during the hearing by phone conference, it sounded like the female Tenant was being handed written notes.

Later in the proceedings, after I had provided my oral decision to the parties, the unidentified witness argued that I had denied the Tenants' right to legal counsel by not letting him testify.

I asked if he was a lawyer and he stated he had passed the bar exams. I asked this person if he was a member of the law society of British Columbia and he replied he was not but he had passed the bar exams. During this conversation, I asked the unidentified witness to identify himself several times and he refused each time.

This person then made a comment with a certain tone that he would, "... see me at the review of the decision..." or words to that effect. I asked this person if he was threatening the Arbitrator and he denied this, but reiterated he would see me at the review. I explained the review process was done in writing. I also cautioned the unidentified witness that holding themselves out to be a lawyer when that is not the case is an offence. The Tenants then became more argumentative and I explained that I would provide them with my written reasons and I concluded the hearing.

Issues(s) to be Decided

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

Background and Evidence

The Landlord claims that the Tenants have, without permission or approval and in contravention of the tenancy agreement, allowed other occupants to occupy the rental unit.

The Landlord claims that many people are coming and going from the rental unit at odd times of the day and night, and the Landlord alleges the Tenants may be involved in the drug trade.

The Landlord claims that the Tenants, or persons allowed on the property by the Tenants, have unreasonably disturbed another occupant or the Landlord; and have adversely affected the quiet enjoyment, security, safety or physical well being of other occupants in the residential building.

The Agent for the Landlord testified that the police have attended the rental unit due to noise complaints and they were looking for a missing girl.

The Agent for the Landlord testified that in February and March of 2014, the Tenants had been served with two 10 day Notices to End Tenancy for unpaid rent. A portion of the outstanding rents have been paid; however, the Tenants did not dispute these Notices nor did they pay all rent due.

The Agent for the Landlord testified that the Landlord is no longer concerned with the outstanding rent, they just want the Tenants to vacate the rental unit due to all the problems occurring.

The Agent explained that the other occupants of the residential property and the commercial property directly below the rental unit have all voiced complaints about the noise and troubles with the Tenants.

In evidence the Landlord supplied letters from three of the occupants from the residential property and one letter from the commercial property below. The letters from residents set out that since the Tenants have occupied the rental unit there has been a steady stream of disturbances and loud, continuing noise coming from the rental unit late at night and during the day. The other occupants state there is often fights and yelling and people going up to the rental unit at all hours of the day and night. They are being disturbed at all hours of the day and night by the noise, and by people buzzing their units, wanting to get into the subject rental unit when the Tenants do not buzz them in.

According to the letters people often come by late and night and leave after only a few moments of being in the rental unit. These letters, and the Agent for the Landlord, allege there is drug trafficking going on at the rental unit.

The letters also set out that the front and back doors to the residential building are often propped open and allege the Tenants are doing this. There are also allegations that the rental unit often has the smell of marijuana coming from it. The letters set out that there are loud parties, fights and arguments in the hallways, people sleeping in the laundry that apparently are friends or guests of the Tenants.

The residential occupants write that they no longer feel safe in their homes, and that they are losing sleep due to all the noise and disturbances. The Landlord is concerned they will lose good renters due to the behavior of the Tenants and their guests.

The commercial enterprise directly below the subject rental unit writes that there is loud music noise during the daytime coming from the subject rental unit directly above, and that the door slamming has been significant enough to have pictures in their store come off the wall and product on their shelves fall off and break. This business also alleges that the Tenants, or their guests, had a fight in front of the store which caused the front window to be broken. The business writes that the window was broken during a fight involving the Tenants, and the participants in the fight were identified by other people to the business.

The Landlord wrote a warning letter to the Tenants about the noise and other disturbances, on February 28, 2014.

In reply, the Tenants testified that the rent had been paid late due to a mix up at the office where they receive financial assistance, although they acknowledge February 2014 rent has not been paid. They agreed they did not dispute either of the 10 day Notices to End Tenancy.

The Tenants allege that everyone else in the residential building smokes marijuana too, not just the Tenants. The Tenants testified that the other residents of the building make noise too.

One of the Tenants testified that they do not hang out together, that each of the Tenants have their own group of friends.

The Tenants allege that the Landlord is picking on them in particular.

One of the Tenants testified that they were not there when the police arrived or when the noise happened. The other Tenants agreed the police have attended on two occasions; one instance where they were looking for a missing girl and the other for a noise complaint.

The Tenants testified that they had just entered into a new tenancy agreement with the Landlord in March of 2014, for a tenancy that started on February 1, 2014, and they thought that this meant that the problems of the past or the outstanding rent no longer counted.

Analysis

Provisions for the early termination of a tenancy are found in section 56 of the Act. These provisions allow a Landlord to end a tenancy earlier than it would end if the Landlord had to give a Notice to End Tenancy for cause under section 47. The early end of tenancy section provides an unusual remedy for the Landlord and the circumstances must merit granting such an order.

Based on the foregoing, the evidence and testimony, and on a balance of probabilities, I find and I am satisfied that the Tenants, or persons permitted on the residential property by the Tenant, have significantly interfered with and unreasonably disturbed other occupants of the residential property. I find the tenancy must end.

I further find the Landlord has proven the Tenants, or persons allowed on the property by them, have adversely affected the quiet enjoyment of other residential occupants in the building. I find that this is supported by the letters received from the other residential occupants and the commercial neighbor below. These letters certainly support that the Landlord is not picking on the Tenants and refute the Tenants' proposition that the Landlord is just having personal differences with the Tenants.

As I have made these findings, I do not need to address the other issues raised about the behavior of the Tenants or their guests.

I note that under section 46 of the Act, this tenancy actually ended in February and in March of 2014, when the Tenants did not pay the rent in full or file Applications to dispute the two 10 day Notices to End Tenancy served on them. While the tenancy may have been reinstated with the parties entering into a new tenancy agreement, that was not the issue before me.

I find that the circumstances now are such that it would be unreasonable and unfair to the other occupants of the residential building to have to wait for a Notice to End Tenancy under section 47 of the Act for cause.

For these reasons I allow the Landlord's claim and pursuant to section 56, I grant the Landlord an order of possession for the rental unit effective **two days after service upon the Tenants**. This order may be enforced through the British Columbia Supreme Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 15, 2014

Residential Tenancy Branch

