



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cornerstone Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

ET, 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 early end of the tenancy and an Order of possession and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord applied requesting dispute resolution on August 28, 2014. The tenant confirmed she received the hearing package by personal delivery on the afternoon of August 28, 2014. The male respondent was served at the same time; this was confirmed by the female tenant. Service occurred in the laundry room of the building.

Therefore, based on the affirmed testimony of the landlord and tenant, I find that the male respondent was served with Notice of the hearing. The tenant said she expected him to enter the hearing but he did not attend.

The landlord confirmed receipt of the tenant's thirty-six page written submission; given on September 2, 2014. The landlord said they had ample time to review that evidence.

Issue(s) to be Decided

Is the landlord entitled to end this tenancy early without the requirement of a Notice to End Tenancy?

Is the landlord entitled to an Order of possession for the rental unit?

Background and Evidence

The tenancy commenced on May 16, 2014; rent is \$895.00 per month, due on the 1st day of each month. The 2 bedroom corner unit is on the upper, 4th floor of a thirty-five unit building.

The landlord has requested an early end of the tenancy based on concerns of illegal activity carried out from the rental unit and an alleged threat made against a neighbouring occupant on the day following service of the hearing documents to the tenants.

The landlord believes that the safety of other occupants, caused by the frequent coming and going from the rental unit points to criminal activity being carried out in the unit. This places the other occupants of the building at some risk.

The police officer present at the hearing is the coordinator of the Crime-Free Housing program. On July 20, 2014 the officer received information reporting a theft from a vehicle in the area of the rental building. Evidence led the police to the rental unit and on August 8, 2014 the crime reduction unit enforced a search warrant for the rental unit. At that time further evidence was located in the rental unit which the police believe links one of the tenants to the theft. Entry was based on a search warrant for possession of stolen property.

The police officer stated that when tenants engage in this type of activity, by operating criminal activity from a rental unit; that activity has a negative impact on others residing in the building. Occupants of a building should be free of the fear that the police may be entering and execute search warrants and warrants for arrest, which can carry some risk to those in the vicinity. The police discovered what they believe was evidence linking the tenants to criminal activity and there is currently a warrant issued for the arrest of the male tenant.

The officer said that he has interviewed the female occupant who resides directly next to the rental unit. This occupant supplied a letter of complaint to the landlord; the letter was issued prior to the hearing and was contained in the landlord's evidence package given to the tenants on August 28, 2014. The occupant reported that on August 29, 2014 she was in the elevator of the building and that the female tenant came out of her unit and made a threat against the occupant.

The police officer reported that the occupant has provided a statement that the tenant blocked her passage out of the elevator and threatened her. This incident frightened the occupant; she went directly into her unit. The next day the occupant went to her vehicle and found that one of the tires had a hole and another was flat. The officer stated that during the interview with the occupant he determined that she has a genuine concern for her safety. A report is in the process of being prepared for charge consideration.

The landlord said that they have been concerned about the constant coming and going from the unit. A June 30, 2014 letter was issued to the tenants, informing them of written concerns received by other occupants of the building. Loud music, the high number of guests coming and going from the unit and excessive noise reported to be disturbing others. The tenants were warned a Notice to end tenancy could be issued.

Once the police entered the home to execute the search warrant, combined with further complaints of other occupants the landlord determined the tenancy should immediately end. The landlord said that when being screened as potential tenants they had given false information on their prior tenancy and had failed to disclose they had been evicted. The tenant said that they were afraid if they had disclosed that information the landlord would have rejected them as tenants.

Evidence supplied by the landlord included an August 26, 2014 email from the police outlining the male tenant's general criminal history for drug and property crimes.

The landlord is finding stripped wires in the building garbage. The police stated this is consistent with wire being stolen and sold.

The landlord supplied copies of 6 letters written by other occupants of the building. All were issued 1 August and formed complaints in relation to the tenant's and their guest's behaviour. They describe screaming, yelling and suspected drug use. The landlord said that as a result of the tenant's behaviour they have lost 2 other occupants, who chose to vacate. The occupants did not allow their names to be revealed on the letters as they are afraid of retribution by the tenants.

The tenant responded that they have had problems in the past but that they are no longer engaged in activity that is criminal. The tenant said that mail from the victim of the vehicle break-in may have been found in their rental unit but she was not aware of anything that they had to do with that allegation.

The tenant thought she was on good terms with the neighbouring occupant. She denies having blocked that person from getting off of the elevator. She did ask the neighbour if she had written a letter of complaint, but that any threat is in "people's heads." The landlord is misinformed and the neighbour is only trying to help the landlord with their case.

The tenant said her co-tenant is no longer engaging in criminal activity and has changed his ways. The tenant said she has no idea how her neighbour's tires were damaged and that she feels harassed by the police. The large numbers of visitors to the unit are friends of the tenants; they are entitled to have guests enter.

Analysis

In order to establish grounds to end the tenancy early, the landlord must not only establish that they have cause to end the tenancy, but that it would be unreasonable or unfair to require the landlord to wait for a notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the testimony of the landlord the police officer witness, I find that the landlord has met that burden.

There is evidence that the tenants and their guests have caused disturbances in the past; the June 30, 2014 letter to the tenants set out those concerns. Of primary concern in relation to the cause that could end this tenancy without the benefit of a Notice ending tenancy is the entry of the police during the investigation of a theft from a vehicle and possession of stolen property. The police located items in the rental unit that allegedly link the tenants to the theft.

It is not for me to determine whether the actions of the tenants contravene the *Criminal Code* but to assess whether the behaviour has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, or jeopardize a lawful right of interest of an occupant or the landlord.

Residential Tenancy Branch policy suggests that to find illegal activity has occurred it must have some affect on the tenancy. If a safety risk to other tenants is possible, due to the illegal activity of a tenant, then the tenancy could end without the need of a Notice ending tenancy.

I find that activities that result in the attendance of the police to enforce a search warrant in the building potentially places all occupants of that building in the position of feeling less secure and safe. Execution of a warrant is based on cause and can be fraught with difficulty and possible risks; other occupants of the building should be free from any possibility of experiencing a negative outcome of police attendance.

Therefore, I find the allegation that the tenants have used the rental unit as part of criminal offence alleged to have occurred elsewhere is of concern and forms cause for eviction.

In relation to the allegation of threats made against the neighbouring occupant on August 29, 2014; I find that this encounter presents considerable cause in support of the case for eviction without a Notice. I found the officer's statement, on the impact this encounter had on the tenant's neighbour, showed that the encounter with the tenant was not inconsequential and I gave it considerable weight. The officer found the occupant to have been significantly frightened. While there is no evidence the tenants damaged the occupant's tires; that damage is certainly coincidental, given the encounter that occurred the day prior.

There is no dispute that the tenant talked with her neighbour on August 29, 2014. The tenant denies any threat was made and said she did not block her neighbour from leaving the elevator. However, I find, on the balance of probabilities that the neighbour was sufficiently frightened that she determined she needed to speak with the police. I have considered the report to the police may have left the neighbour feeling even less secure, but the fact that she made the report to the police causes me to find, on the balance of probabilities, that she was afraid. The neighbour would have obviously been further anxious when she discovered her tires had been damaged and I find that incident highly suspect; given what had occurred the day prior. However, there was no proof before me that the tenants were responsible for that damage.

I find, on the balance of probabilities, that the execution of a search warrant and the presence of items allegedly linked to crime forms reason to end a tenancy for cause; particularly when combined with other concerns expressed by the landlord. However, it is the alleged threat against the neighbour that causes me to find that the tenancy should end early. Threats to the safety and security of other occupants cannot be tolerated and are of paramount concern. Therefore, I find that the tenancy must end early based on section 56 of the Act as the result of a significant interference and disturbance caused to the neighbour on August 29, 2014.

In the circumstances I find it would be unreasonable and unfair to require the landlord to wait for a notice to end the tenancy under s. 47 and therefore I find that the landlord is entitled to an Order for possession.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenants**. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

As the landlord's Application has merit I find that the landlord is entitled to the \$50.00 filing fee which may be deducted from the security deposit.

Conclusion

The landlord is entitled to an Order of possession without the benefit of a Notice ending tenancy.

The landlord is entitled to filing fee costs.

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: September 16, 2014

Residential Tenancy Branch

