



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking to end the tenancy early and obtain an order of possession for the rental unit, and to recover the filing fee for the Application.

Both parties appeared at the hearing. 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 provided affirmed testimony.

I have reviewed all documentary 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.

Issue(s) to be Decided

Should the tenancy end earlier than it would under a Notice to End Tenancy?

Background and Evidence

The rental unit consists of a residential home, with renters in the upper unit and the Tenants living in the basement unit.

The Landlord testified that he has had complaints from the upstairs renters that the Tenants have unreasonably disturbed them, and that the Tenants are seriously jeopardizing their health and safety.

The Landlord testified that the male Tenant leaves the motor running in his car for 2 or 3 hours at a time and the exhaust fumes from the vehicle are entering the rental unit

where the upstairs renters live. The Tenants also leave the music playing in the vehicle loud enough to disturb the renters upstairs and also the neighbours. In evidence the Landlord submitted letters from the Witness who resides in the upper unit, and two neighbours of the rental unit. The neighbours are complaining about noise from the Tenants and that they let their vehicles idle for long periods of time.

The Landlord testified that the upstairs renters had complained to the Landlord about the Tenants making noise playing their music loudly and letting the vehicles sit there "revving", which I take to mean "idling", and having the exhaust fumes enter the upper rental unit.

The Landlord explained the Tenants keep ignoring his requests to cease making noise and stop letting their vehicles idle with the fumes affecting the upstairs renters. In evidence the Landlord has provided copies of two warning letters given to the Tenants; one regarding smoking around the rental unit in breach of their tenancy agreement, and the other regarding excessive revving noise and loud music being played from the Tenants' vehicles when parked outside the rental unit.

The Landlord testified that the police have been called numerous times to attend to the rental unit regarding complaints about the Tenants. He alleges the Tenants have harassed and threatened the renters upstairs. The Landlord further alleges that the Tenants have been smoking marijuana around the rental unit and one of the neighbours who witnessed this has complained about this to the Landlord.

The Landlord testified that he had given the Tenants a one month Notice to End Tenancy for cause, and they have disputed the Notice to End Tenancy. Apparently there is a hearing scheduled for this Notice to End Tenancy in October of 2014.

The Landlord testified that this is a serious health and safety issue as the renters upstairs are being exposed to the toxic fumes from the vehicle, such as carbon monoxide and other harmful gases.

Although given the opportunity to do so, the Tenants did not cross examine the Landlord on his testimony or evidence.

The male Tenant testified that he does not run the vehicles constantly. He testified that he starts the car up every two to three weeks and lets it run by itself for 25 to 30 minutes. He testified he has to warm up the vehicle every 3 weeks to keep it running. He stated he had to rev it up a bit because it is carbureted and it will start to idle after it warms up a bit. He denied the vehicle runs constantly.

The female Tenant testified that she does not smoke pot and therefore, the neighbour could not have seen her smoking it.

The Witness then provided affirmed testimony. The Witness is the occupant of the rental unit above the subject rental unit and has written to the Landlord several times asking for help with the Tenants. The Witness provided medical evidence from her doctor that she suffers from a condition that would be worsened by the Tenants' behaviour.

The Witness testified that she has been threatened and harassed by the Tenants. She alleges they are racist toward her because she is a person of colour.

The Witness testified that the engine running on the vehicle will often go on for an hour or two and has been left for as long as three hours. The fumes from the vehicle enter their rental unit and she has to close the windows and suffer in the heat during the summer. She is concerned about the fumes and carbon monoxide.

The Witness testified that in one instance she had asked the male Tenant who was working on his vehicle at the time with the motor running and his music playing very loudly, to please be considerate and turn down the music. The Witness explained she had a headache and asked the Tenant to shut off the vehicle and turn down the music.

The Witness testified that initially the Tenant ignored her and she had to yell at him to get his attention.

She testified that she was on the balcony and asked him if she needed to come down and speak with him. She testified he replied, "Yes, come down here". The Witness felt frightened by his tone and asked him if he was going to hit her, and according to the Witness the male Tenant yelled, "Yeah, I'm gonna hit you", or words to that effect. The Witness testified that she asked him what kind of man would hit a woman, and he replied, "What does it matter for your kind?" or words to that effect.

The Witness further testified that the male Tenant has a confederate flag on his vehicle and he is a racist. She testified that it is not possible to have a conversation with the Tenants without it turning confrontational.

The Witness called the police regarding the Tenant's threat to hit her. The Witness alleges that the police informed her that the Tenants are known to them and warned them about the Tenants.

The Witness testified the police have been to the residence to deal with complaints about the Tenants at least four times as a result of her calling.

The Witness submitted that on another occasion the Tenants barricaded the front driveway by parking their vehicles in a V formation and putting up a chain between the vehicles. The Witness submitted that this made it very hard to move the garbage and recycle bins to the front of the property. The Witness called the police who attended for this problem.

The Witness testified that she and her young son are terrified by the Tenants and fear for their health and safety, not just from the exhaust fumes but from their behaviour.

The Tenants were given an opportunity to ask questions and cross examine the Witness, but testified they had no questions for the Witness. The Witness was excused.

In reply to the evidence, the male Tenant denied he is racist. He explained he has a confederate flag on his vehicle because his heritage is from southern Texas and he was raised in the heritage of southern Texas. He denied one of the instances the Witnesses alleged her son was involved in and that he was frightened by the Tenants.

The female Tenant then alleged that the Witness had harassed her and the male Tenant. She testified that the Witness often comes out and yells at them. The female Tenant testified she thought this all started when the Witness asked her if she was smoking and the female Tenant told her yes, she was smoking.

The female Tenant also alleged that the Witness yelled and swore at her through a window about a problem with the recycle bins.

The female Tenant testified that the male Tenant would often be working under the hood of his vehicle so he would have to turn up his music so he could hear it. That was why the music had been played loudly.

The female Tenant denied that the male Tenant had threatened the Witness.

The Tenants agreed that the police had been to the rental unit twice.

Analysis

Based on the foregoing, the evidence submitted and the affirmed testimony, and on a balance of probabilities, I find and I am satisfied that the Tenants, have significantly interfered with and unreasonably disturbed other occupants of the residential property.

I further find that the Tenants have seriously jeopardized the health and safety of the other occupants of the property.

I find there is a preponderance of evidence that the Tenants have left vehicles running with exhaust fumes being allowed to enter the living space of the occupants above. The Tenants have been warned about this by the Landlord and by the occupants above, and have had incidents with the occupants over this serious enough to merit calling the police.

I found the Tenants had no reasonable cause or purpose in running the vehicles with loud music playing. I find it is more probable than not that this was done to disturb and intimidate the occupants of the unit upstairs. I find that this appears to be retaliatory or at the very least an intentional action by the Tenants.

I find that a reasonable person, once notified of the problems idling these vehicles were causing, and the disturbance from their loud music, would take steps to alleviate the disturbances.

For example, even if the Tenants were required to start the car to keep it running (which I do not accept as being proven), a reasonable person would move the car into a position to avoid the exhaust entering a dwelling place.

Certainly the cost of running gas through the vehicle for these periods of time, such as the 25 to 30 minutes the male Tenant claimed, would be offset if they simply purchased a trickle charger to keep the battery charged. In any event, I do not find that 25 to 30 minutes of running a vehicle allowing exhaust to enter a living space, all the while with loud music playing, is reasonable behavior to subject ones' neighbours to on a regular basis.

I also note that the male Tenant did not deny threatening to hit the Witness or that he had made comments about her racial background, despite denying other claims made about him.

For all of these reasons, I find that the Tenants have caused a serious jeopardy to the health and safety of the occupants upstairs, and have unreasonably disturbed them.

I further find and I am satisfied 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.

Therefore, pursuant to section 56, I grant the Landlord an order of possession for the rental unit effective **two days after the Tenants are served with the order**, and I grant and issue the order in this form. This order may be enforced through the British Columbia Supreme Court.

Conclusion

I find the Tenants have unreasonably disturbed and have seriously jeopardized the health and safety of the occupants at the rental unit. The Landlord is granted an early end to the tenancy **effective two days after the Tenants are served** with the order.

I also grant the Landlord the **\$50.00** filing fee for the Application, and order that the Landlord may deduct this sum from the security deposit paid by the Tenants.

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 Act.

Dated: September 15, 2014

Residential Tenancy Branch

