



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 an Application for Dispute Resolution filed on January 8, 2015 by the Landlord to end the tenancy early and obtain an Order of Possession.

The hearing was conducted via teleconference and was attended by the Landlord A.F. who appeared on his own behalf and also as agent for the Landlord D.F. A.F. gave affirmed testimony. Therefore, for the remainder of this decision, terms or references to the Landlord importing the singular shall include the plural and vice versa.

The Tenants appeared as well and provided affirmed testimony.

The Landlord testified that he personally served the Tenants with the 1 Month Notice to End Tenancy on January 10, 2015 (the "Notice"). The Notice provided for an effective date of February 28, 2015. The Tenants applied to dispute the Notice on January 16, 2015; a hearing date is set for February 5, 2015 at 10:30 a.m., two weeks from the date of the within hearing.

Issue(s) to be Decided

Should the Landlord be granted an early end of tenancy pursuant to section 56 and an Order of Possession?

Background and Evidence

The Landlord testified that the tenancy began October 1, 2014. Monthly rent was payable in the amount of \$3,000.00. The rental unit is located in a building described by the parties as the "Loft Building" which is connected by a bridge to another building, referred to by the parties as the "Condo Building".

The Landlord testified that the reasons for requesting an early end to tenancy are as follows:

1. The Tenants do not wait for the gate to close when entering the secured parking, which resulted in the Landlord receiving "security gate fines". In support, the Landlords provided a letter from the Strata dated October 31, 2014 regarding this issue.
2. The Tenants had a party on December 13, 2014 which resulted in numerous complaints by other occupants as well as vomit and cigarette butts being found in the common areas, and more particularly, on the deck below the rental unit. The Landlord submitted a letter from the Strata dated December 15, 2014 regarding this party and the disruption to other occupants. The Landlord also submitted text messages exchanged by the parties about this incident.
3. The Tenants had another party on December 31, 2014/January 1, 2015 (the "December 31st Incident"). The Landlord testified that on this occasion, one of the Tenants' guests assaulted the concierge resulting in police attendance. The Landlord also testified that the Tenants' guests also stuffed paper in the security doors allowing for re-entry and thereby compromising the security of the building.

In response to the above allegations the Tenants testified as follows:

1. The Landlord informed the Tenants that the vehicle which was recorded by video surveillance as not waiting for the secured parking garage gate to close was in fact a white SUV. According to the Tenants they drive a black pick-up truck and blue two-door BMW and as such, they do not believe that they are responsible for the alleged security breaches.
2. The Tenants conceded that they had a party on December 13, 2014 but denied that the vomit and cigarette butts were the sole result of their guests' behaviour. Rather, the Tenants submitted that it was a Saturday night, and several other occupants were also having parties. The Tenants stated that although their guests may have been responsible for some of the cigarette butts, the vomit was found in the common areas and could have been the result of other occupants or their guests.

Further, the Tenants testified that they cleaned up the cigarette butts from their neighbours' balcony. They stated that they realized the party was loud and

disruptive and that as a result they spoke to their neighbours after the party, apologized, and brought wine to them as a conciliatory gesture.

The Tenants submitted in evidence unsigned and undated letters from other occupants in support of their claim that they are friends with the other occupants and get along well with the others. They confirmed that the letters were actually sent as emails and provided the dates and times they were sent, and confirmed they intended to submit the emails at the February 5, 2015 hearing.

The Tenants submitted a text message from the Landlord sent December 30, 2014 at 5:55 p.m. wherein the Landlord wrote:

"I spoke to the concierge and they told me that you were very compliant when they brought the noise issue to your attention. I'm happy you are aware of the severity of this issue, I just need us all to be on the same page here. Your apology is accepted. I know mistakes can happen, but lets make sure that occurrences like this never happen again for the goof of us all..."

[Reproduced as Written]

3. In response to the December 31st Incident the Tenants testified that they were having a small gathering of friends before they left for a larger New Year's Eve event at another location. According to the Tenants, only M.K. was present at the time. M.K. testified that including himself, there were 7 people in the rental unit.

M.K. testified that he left the rental unit to go to a grocery store for items and while he was gone one of his guests attempted to let in another guest, which resulted in an argument with the concierge. According to M.K., the concierge did not realize the first guest had already been let in. The Tenants then testified their friend was in fact defending himself from an unprovoked physical attack by the concierge during the December 31st Incident. The Tenants testified that the police reviewed the video surveillance which showed the concierge attacking and hitting their guest after a verbal altercation.

Neither party submitted the police report dealing with the December 31st Incident, although the Tenants testified they believe the Strata had a copy. The Tenants stated that they intended to obtain a copy of the report and introduce it in evidence at the February 5, 2015 hearing.

The Landlord testified that he saw some of the video surveillance, including the part which showed the argument, but that he did not watch the part which would have shown the physical altercation.

Analysis

Section 56 of the *Act* allows a tenancy to be ended early without waiting for the effective date of a one month Notice to End Tenancy if there is evidence that the tenants have breached their obligations under the tenancy agreement or *Act* and it would be unreasonable or unfair to wait for the effective date of a one month Notice to End Tenancy.

After careful consideration of the foregoing, documentary evidence filed by both parties, and on a balance of probabilities, I find that the Tenants, in having their party on December 13th, have breached section 28 of the *Act* by negatively affecting the quiet enjoyment and safety of other occupants. I note that the Tenants acknowledged their party was disruptive to others and took steps to resolve this issue.

However, I find insufficient evidence to make any findings with respect to the Landlord's first allegation concerning the parking garage security violations. Similarly, I find insufficient evidence to make any findings with respect to the Landlord's third allegation regarding the December 31st Incident. Neither party was present at the time of the incident and the individuals involved in the altercation did not provide evidence. As well, both parties acknowledge independent evidence exists, in the form of a police report and video footage, yet that evidence was not presented.

I find that the Landlord has failed to prove that it would be unreasonable or unfair to the Landlord to wait for a one month Notice to End Tenancy to take effect. Therefore, I dismiss the Landlords' application to end this tenancy early.

The Landlord, having been unsuccessful in this application, is denied their request to recover the filing fee.

Conclusion

The application for an early end to tenancy pursuant to section 56 is dismissed. The tenancy will continue until ended in accordance with the *Act*.

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 29, 2015

Residential Tenancy Branch

