



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, ET, FF

Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested an early end to tenancy pursuant to section 56 of the *Residential Tenancy Act*, an Order of Possession based on a material breach of the tenancy agreement and to recover the filing fee.

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.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Landlord be granted an end of tenancy and an Order of Possession?
2. Should the Landlord recover the fee paid to file his application?

Background and Evidence

This tenancy began on November 1, 2014. Monthly rent was payable in the amount of \$1,600.00.

On May 4, 2015 the Landlord issued a 1 Month Notice to End Tenancy for Cause with an effective date of June 4, 2015 (the "Notice"). Pursuant to section 53 of the *Act*, incorrect effective dates automatically correct such that the effective date of the Notice is July 1, 2015.

The reasons cited on the Notice were noted as follows:

1. Tenant is repeatedly late paying rent.
2. Tenant has allowed an unreasonable number of occupants in the unit/site.
3. Tenant has engaged in illegal activity that has, or is likely to:
 - a. Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
4. Tenant has assigned or sublet the rental unit/site without landlords' written consent.

The Landlord submitted in evidence a letter to the Residential Tenancy Branch outlining his reasons for ending the tenancy; including: the Tenants are repeatedly late paying rent; the Tenants have five vehicles, rather than the three permitted under the residential tenancy agreement; that there appear to be additional unauthorized occupants at the rental unit; that one of those guests behaved in an unusual and threatening way towards the Landlord when he attended to make necessary repairs; that the Landlord's neighbours and friends have reported "things going missing in the area" since the tenancy began; as well as the allegations contained in the police report issued by the local police, which he writes "speaks for itself".

That letter, dated May 15, 2015 from the local police to the Landlord, was also introduced in evidence. The writer lists "several police involved incidents" with respect to the rental unit, including:

- *2015/05/01 Citizen Complaint – Known Criminal*
- *2015/04/30 Citizen Complaint*
- *2015/04/20 Breach – Known Criminal*
- *2015/04/18 Curfew Check – Known Criminal*

- 2015/04/17 Breach – Known Criminal
- 2015/05/04 Vehicle Check – Known Criminal (Street Check)
- 2015/05/02 Street Check – Known Criminal (Street Check)
- 2015/05/02 Residence Check – Known Criminal (Street Check)
- 2015/03/15 Vehicle Check – Known Drug Dealer (Street Check)

No details are provided as to the above incidents.

The letter continues with the following:

“...Given the above mentioned incidents, it is the position of the [Local Police Department] that your property has been used in an ongoing manner as an instrument of unlawful activity. As the property owner you have an obligation to ensure your property is not being used to facilitate criminal events. Failure to act accordingly shows either a willful blindness on your part or negligence in fulfilling your obligations. Lawful recourse exists through the Residential Tenancy Act to protect your interests and rights as a property owner.”

The writer then directs the Landlord to the Branch website as well as the municipal district in which the rental unit is located and concludes with the following:

“Please note that should the situation continue where your property is used as an instrument of unlawful activity your property could be the subject to restraint and forfeiture through criminal and/or civil legislation.”

The Landlord was not able to provide any details as to the nature of the complaints by neighbours, or any further details as to the listed “police involved incidents”. He did, however, state that he was advised that one individual was chased by the police in a helicopter which followed him to the “trailer” located on the rental property.

The Landlord testified that he was advised by the police that the Tenants had “extensive criminal pasts”. The Landlord confirmed he did not have any details as to this allegation.

The Landlord stated that the basement and outbuilding are full of outboard engines, generators and lawnmowers which he suspects are stolen.

The Landlord further stated that he was advised by the police that crime in the area of the rental unit had increased since the Tenants had moved in and that the rental property is under “constant surveillance”. Further, the Landlord stated that the police

are “eager to get them out” and “help the [Landlord] because of the increased criminal activity”.

When I asked if he had received any further communication from the police with respect to the warnings contained in their letter, which suggest the possibility of proceedings under the *Civil Forfeiture Act*, the Landlord confirmed he had not. The Landlord confirmed that the last communication he had from the police was the letter. He said that he did recently have a telephone conversation with Constable B., and that this conversation occurred as she was returning his call. He confirmed that he told her that he was proceeding with an Application under the *Residential Tenancy Act*, and that he would require her as a witness and provided her with information as to how to call into the hearing.

Constable B. did not call into the hearing. Attempts were made to call her, at the request of the Landlord, although she was not available and consequently did not testify.

The Tenant, R.G. conceded that the police had attended the residence on 4 occasions, but that (and as noted on the letter from the police) the purpose of their visit was to do a “curfew check” on R.G.’s friend, who was a guest of R.G. R.G. testified that he told the Landlord that his friend would be staying and that he was on parole and as such required evening curfew checks. R.G. submits that this is in no way evidence of criminal activity.

R.G. further stated that the first time he was aware the Landlord had any issue with the Tenants was when he received the 1 Month Notice. He stated that he has a good rapport with the Landlord, and has done nothing to give the Landlord reason to end the tenancy.

In response to the Landlord’s allegations that the police chased an individual by helicopter to the rental unit, the R.G. testified that he was not there, did not know the individual involved and had no further details.

In response to the Landlord’s allegation that stolen property is stored at the rental unit, R.G. testified that he does small engine repair, and attends swap meets every Sunday where he sells small engines, lawnmowers, etc. as a means to generate income. He testified that when he moved in he told the Landlord that he had such a side business and in fact he was very excited that the rental property allowed him use of a basement and outbuilding for storage of these items.

R.G. confirmed that the police have not spoken to him, and that he did not receive any warning letters, or any communication from the Landlord, save and except the Notice, which would indicate there was any problem with his tenancy.

In response to the Landlord's claim that crime had increased in the neighbourhood since the tenancy began, R.G. stated that he was aware, based on discussions he has had with others, that the crime rate had in fact increased before they moved in, he is not aware who else lives in the area, and in any case, denies that any increase in crime can be attributed to the Tenants or their guests.

In reply to the Tenants' response, the Landlord stated that the only "true proof" he had was the report from the police entered into evidence. The Landlord reiterated that he was primarily concerned about his property.

Both parties confirmed that a further hearing was scheduled on June 30th, 2015, involving the Tenants' Application to set aside the 1 Month Notice for Cause, and the Landlord's Application for an Order of Possession.

Analysis

Under section 56 of the Act, the tenancy may only be ended early if the Landlord provides sufficient evidence that the Tenants have

1. significantly interfered with the Landlord or another occupant of the residential property;
2. seriously jeopardized the health or safety or lawful right or interest of the Landlord or another occupant;
3. put the Landlord's property at significant risk;
4. engaged in illegal activity that
 - a. has damaged or is likely to damage the Landlord's property,
 - b. has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or
 - c. has jeopardized a lawful right of another occupant or the Landlord; or

5. caused extraordinary damage to the residential property

and it would be unreasonable or unfair to the Landlord or other occupants to wait for a notice to end tenancy for cause to take effect (emphasis added)

In this case, the evidence from the Landlord is that the police have attended the residence on numerous occasions. The evidence filed suggests the police were primarily doing checks on the property, the Tenants and their guests. The Landlord stated that he is informed the police have the rental property under “constant surveillance”. While there appears to be two instances when the police attended because of citizen’s complaints, as well as allegations of breaches, no details were provided as to the nature of the calls.

The Landlord also alleged the Tenants have stolen property on the rental property. The Tenants deny this allegation, stating that they regularly attend swap meets and repair small engines and equipment. Where the parties provide conflicting versions, and without any evidence to support either parties’ version, the party with the burden of proof fails. In this case, the Landlord bears the onus of proving the Tenants are engaged in illegal activity, and I find the Landlord has failed to meet that burden.

The Landlord testified that the police want the Tenants out of the neighbourhood and were willing to help the Landlord. The Landlord stated that Constable B. would provide evidence in support of his application; yet she did not call into the hearing and my attempt to add her into the hearing was unsuccessful.

The Landlord confirmed that the most recent communication he received from the police was the letter introduced in evidence and dated May 15, 2015. While the potential impact on the Landlord’s property may be significant, there was no indication that the police have taken any steps in furtherance of an application under the *Civil Forfeiture Act*, nor is it possible to ascertain the risk to the Landlord’s property based on the very vague/general information contained in the May 15, 2015 letter. Again, Constable B. was not available to provide any further evidence in this regard and the Landlord’s information with respect to this risk was similarly limited.

A hearing is scheduled for June 30, 2015 at which time the presiding Arbitrator will determine whether the Notice should be set aside, or the Landlord should be entitled to an Order of Possession.

Based on the foregoing and on the balance of probabilities, I find that while the Landlord has introduced evidence which might support a finding that the Landlord’s property is at

risk, based on the warnings contained in the letter from the police, the Landlord confirmed he has had no further communication from the police which would suggest the police intend to act on their warning before July 1, 2015.

Further, the Landlord was not able to provide any specific details as to the allegations contained in the letter from the police. According to the Landlord, the property is under constant surveillance and as such it is possible the police checks are simply a result of this constant surveillance, not as a result of any specific incidents.

I accept the evidence of the Tenants that they attend swap meets, and fix and sell small engines as a means to generate extra income. I find that the Landlord has failed to prove that the Tenants are storing stolen property at the rental unit.

Additionally, section 56 requires the Landlord to meet *both parts* of the test and in this regard, I find that the Landlord has not met the second part of the test, namely that it would be unreasonable or unfair to the Landlord or other occupants to wait for a notice to end tenancy for cause to take effect on July 1, 2015.

Accordingly, the Landlord's Application for an Order ending the Tenancy early pursuant to section 56 is dismissed. The Landlord, having been unsuccessful, is not entitled to recovery of the fee paid to file his application.

Conclusion

The Landlord failed to establish that it would be unreasonable or unfair to the Landlord or other occupants to wait for a the Notice to take effect on July 1, 2015; consequently, the application for an order 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: June 12, 2015

