



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

matter regarding RICECHILD MANAGEMENT LTD DBA BAYVIEW APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB, ET, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an early end to tenancy and Order of Possession. The landlord also seeks to recover the filing fee for this proceeding from the tenant.

At the outset of the hearing the landlord withdrew their application for an Order of Possession because the tenant breached an agreement with the landlord.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Residential Tenancy Act (Act)*; served by registered mail on July 28, 2015. Canada Post tracking numbers were provided by the landlord in verbal testimony. The landlord also served the tenant by posting the documents to her door when the tenant did not collect the registered mail. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent's agents appeared. The landlord's agent GF gave sworn testimony and was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the landlord entitled to end the tenancy early and gain an Order of Possession on the basis of their application to end the tenancy early pursuant to section 56 of the *Act*?

Background and Evidence

CF testified that this fixed term tenancy started on September 16, 2014 and ends on August 31, 2015 with the option of continuing on a month to month basis. Rent for this unit is \$900.00 per month and is due on the first day of each month in advance. A copy of the tenancy agreement has been provided in documentary evidence.

CF testified that the tenant has caused disturbances to her neighbouring tenants. There had been complaints of loud noise late at night from a number of the tenant's neighbours and a One Month Notice to End Tenancy was served upon the tenant for these infractions after a warning letter were sent to the tenant. The day before the Notice to End Tenancy was issued the building manager was called by neighbouring tenants in the middle of the night to say someone was climbing up the outside of the building. The building manager went to see what was happening and he found two people climbing up to the tenant's unit via the tenant's balcony below and this tenant's balcony. Later the same morning in the early hours the building manager saw the tenant and another man climbing up the building to the tenant's unit. The building manager challenged the tenant, her male friend became aggressive towards the building manager and both the tenant and her friend went away. The building manager had even more concerns about the tenant's actions as they appeared to be intoxicated or high on some other substance.

The tenant's unit is on the second floor of the building and the tenant whose balcony they accessed and neighbouring tenants thought they were being broken into. This caused significant disturbance to the other tenants and the building manager. The act in its self was dangerous and if anything had happened to the tenant or her guests the

landlord could have been held libel. The tenant and her guests also caused significant damage to the trellis on the outside of the building. The landlord has provided photographic evidence showing the building and the damaged trellis.

CF testified that the tenant has filed an application to cancel the One Month Notice and a hearing is scheduled for September 22, 2015. CF testified that since the tenant was served the One Month Notice there have been no further problems, the tenant did write a letter of apology; however, the landlord wrote to the tenant and to inform the tenant the landlord was not revoking the One Month Notice. CF testified that they seek an Order of Possession to end the tenancy early.

Analysis

When an early end to tenancy is granted, instead of receiving a One Month Notice, which a tenant would receive when being evicted for cause, the tenant receives virtually no notice. An early end to tenancy is an extreme remedy under the *Act*, when there are provisions in the *Act* providing the landlord with opportunity to evict the tenant for cause and providing the tenant with a specific notice period. In this instance the landlord has served the tenant with a One Month Notice.

Under S. 56(2) (b) of the *Act*, in order to establish a claim for an early end to tenancy, the landlord must establish that it would be unreasonable or unfair to the landlord, or other occupants of the residential property to wait for a Notice to End Tenancy under s. 47 of the *Act* to take effect (my emphasis).

The landlord has the burden of proof to show that the tenant has acted in a manner which would give rise to the extraordinary measure of issuing an Order of Possession to the landlord to end the tenancy early. The landlord has provided evidence in the form of compliant letters from other tenants concerning late night noise disturbances; incidents report concerning the tenant and her friends climbing up the building to access the tenants unit; and a warning letter about noise disturbances. I am not satisfied that

these incidents described above standing alone or collectively are significant enough to warrant an early end to tenancy. There have been no more incidents since the tenant was issued with the One Month Notice or the landlord's hearing package. There is insufficient proof to show that the tenant's actions endangered the building or other occupants. While some minor damage may have been caused to the trellis this would not be significant enough to warrant an early end to tenancy. While I accept the tenant has caused disturbances to other tenants and that this may have been excessive at times this can be dealt with under a One Month Notice to End Tenancy.

It is therefore my decision that the landlord has insufficient evidence to allow me to end this tenancy early and find it would not be unreasonable or unfair for the landlord to wait for a Notice to End Tenancy for cause to take effect and this may be dealt with at the hearing scheduled on September 22, 2015.

Conclusion

For the above reasons I dismiss the landlord's application for an early end to tenancy. As the landlord has been unsuccessful, the landlord must bear the cost of filing this application.

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: August 28, 2015

Residential Tenancy Branch

