



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 pursuant to the *Residential Tenancy Act* (the Act) for:

- an early end to this tenancy and an order of possession pursuant to section 56; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1142 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord elected to call two witnesses: KK and MF.

The landlord testified that he personally served the tenant with the dispute resolution package (including all evidence before me) on 21 November 2015. The landlord testified that he knocked on the tenant's door and handed the dispute resolution package to the tenant. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an early end to this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord and witnesses, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 May 2015. The parties entered into a written tenancy agreement on 6 May 2015. Monthly rent of \$650.00 is due on the first. The landlord continues to hold the tenant's security deposit in the amount of \$325.00, which was collected at the beginning of the tenancy.

The rental unit is one of three units occupying the lower floor of the residential property. The landlord resides in the upper floor of the property. KK and MF are occupants of separate, but adjacent units to the rental unit within the same residential property. The north wall of the rental unit is the south wall of KK's unit. The west wall of the rental unit is the east wall of the MF's unit.

The landlord testified that the tenant has caused issues since the beginning of the tenancy. The landlord testified that he can sometimes hear the tenant upstairs, but that it is mostly MF and KK that are disturbed by the tenant. The landlord testified that he received complaints from MF and KK very early in the tenancy. The landlord testified that he attended at the rental unit to caution the tenant about his behaviour. The landlord testified that the tenant is a very angry person. The landlord testified that the tenant had upward of eight people residing in the one-bedroom rental unit. The landlord testified that there would be arguments and disturbances as a result of these guests. The landlord testified that these additional occupants are no longer there. The landlord testified that as recently as Christmas Day the tenant was causing a disturbance: The tenant was yelling at his pet cat at 0300. The landlord estimated that he has telephoned the police two or three times regarding the tenant's conduct.

The landlord testified that in mid July he received a letter from a legal advocacy group on behalf of KK. The letter set out KK's complaints regarding the tenant. In particular, the negative effects that the tenant was having on KK's quiet enjoyment of his residence.

The landlord provided me with a letter dated 20 August 2015 from the legal advocacy group on behalf of KK. The letter reiterates KK's complaints of disturbance by the tenant.

On 2 October 2015, the landlord wrote to the tenant. The landlord sets out that the letter represents the tenant's last warning and that any more issues would result in an end to tenancy. In particular, the landlord warned the tenant that he was not to unduly disturb other tenants with loud noise.

I was provided with written statements by both KK and MF.

MF's statement is dated 18 November 2015. Under oath MF adopted the contents of the written statement as true. The written statement documents a history of disturbances from the rental unit since the tenancy began. MF notes that the police were called multiple times to the rental unit. MF testified that he has personally called the police twice. MF states that on 6 November 2015, the tenant was yelling and smashing items in the rental unit. MF states that he called the police. MF sets out that the disturbances occur approximately four times per week. MF testified that he tried to talk to the tenant once about his conduct, but there was no reasoning with the tenant. MF testified that the tenant once smashed furniture in the rental unit from 2300 to 0500.

KK testified that his is disturbed by the tenant's swearing and cursing. KK testified that the disturbances began on the day the tenant moved in. KK testified that on one occasion he confronted the tenant about the noise disturbance and the tenant threatened KK with a metal pipe. On another occasion, the tenant verbally threatened KK by telling him that the tenant would "put [KK] in the hospital". This event occurred in November and the police attended. KK testified that his sleep is disrupted by the tenant. KK testified that the tenant's conduct is not fair to the occupants of the residential property or the neighbours.

KK's written conduct describes five incidents he characterises as major, which include the threat with the metal pipe, swearing at the landlord, shouting and throwing objects, stating that the tenant did not care if he hurt anyone by assaulting them, screaming outside that he was going to kill someone, and threatening to put KK in the hospital.

Analysis

In accordance with section 56 of the Act, in receipt of a landlord's application to end a tenancy early and obtain an order of possession, an arbitrator may grant the application where the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health and safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property in significant risk;
- engaged in illegal activity that:
 - has caused or is likely to cause damage to the landlord's property;
 - has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property; or
 - has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property.

In addition to showing at least one of the above-noted causes, the landlord must also show why it would be unreasonable or unfair to the landlord to wait for a 1 Month Notice to take effect.

A one month notice to end tenancy for cause is the standard method of ending a tenancy for cause. An order to end tenancy early pursuant to section 56 requires that there be particular circumstances that lend urgency to the cause for ending the tenancy. That is the reason for the requirement that the landlord show it would be "unreasonable or unfair" to wait for a cause notice to take effect.

On the basis of the sworn and uncontested testimony of the landlord, KK and MF, it is very clear that the tenant has significantly interfered with or unreasonably disturbed the occupants KK and MF. In particular, the constant yelling and banging of objects combined with the threats of violence is sufficient to satisfy me that this ground is met.

The landlord has provided extensive evidence that the severity of tenant's conduct escalated over the course of the tenancy from noise in the beginning to threats of violence later in the tenancy. I accept that it would be unreasonable for the landlord to wait for a 1 Month Notice to take effect as there is a risk of the threats of violence escalating to actual violence significantly interfered with or unreasonably disturbed.

On this basis, I grant the landlord's application for an early end to tenancy.

As the landlord has been successful in this application, he is entitled to recover his filing fee from the tenant. Pursuant to paragraph 72(2)(b), the landlord may choose to withhold the monetary award from the tenant's security deposit in which case the value of the tenant's security deposit is reduced by \$50.00.

Conclusion

The landlord is provided with the monetary order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: December 29, 2015

Residential Tenancy Branch

