



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with an Application for Dispute Resolution by landlord to end the tenancy early and obtain an order of possession.

Both parties appeared, gave 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 at the hearing

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. I have reviewed all evidence of the parties, only those relevant to my decision are referred to.

Issue to be Decided

Is the landlord entitled to end the tenancy early and obtain an order of possession?

Background and Evidence

The parties agreed they entered into a ten month fixed term tenancy, which began on October 7, 2016 and was to expire on August 1, 2017. Rent in the amount of \$1,250.00 was payable on the first of each month. The tenants paid a security deposit of \$625.00. The parties agreed that the tenants were entitled parking for 1 vehicle, under the terms of their tenancy. Filed in evidence is a copy of the tenancy agreement.

Counsel for the landlord submits that they served the tenants a Notice to Terminate or Restricting a Service or Facility (the "Notice"), on November 30, 2016. Counsel stated that parking restrictions were place on the tenants so they could no longer park on the paved area of the driveway; however, the were permitted to park either on the gravel portion of the driveway, or on the street. The tenants were given a rent reduction in the amount of \$75.00.

Counsel submits the tenants acknowledged receipt of the Notice when they sent an email on December 6, 2016. Filed in evidence is a copy of the email dated December 6, 2017.

Counsel submits that since the tenancy commenced there have been numerous difficulties with the tenants. Counsel stated that the landlord originally lived in the upstairs portion and there

issues with noise, parking and aggressive behaviour by the tenants both in person and by email. Filed in evidence are emails. Filed in evidence is an affidavit of the landlord.

Counsel submits that the landlord move out of the property in the middle of December 2016 and the new renters were to move into the upper portion of the house on January 1, 2017; although that was delayed until February 1, 2017.

Counsel submits that the landlord new that parking was going to be an issue with the tenants and decided to restrict that service to the tenants as they were refusing to parking on the gravel portion of the property. The Notice restricting access to the pave area was effective on January 1, 2017; however, that date was extended since the new renters were not moving in until February 1, 2017.

Counsel submit that the tenants have engaged in harassing behaviour which they have been warned by the police that is boarding on criminal behaviour.

Counsel submits the new renters have been unreasonable disturbed, and significantly interfered with that have impacted their sense of safety, security and physical wellbeing.

Counsel submits that the tenants woke up the new renter's family, by ringing and banging on their door and they were screaming, swearing and making unreasonable demands to have them move their vehicle renters. The other renter decided to move their vehicle, simply stop this unwelcomed behaviour; however, the tenant followed them and continued to yell, scream and swear.

Counsel submits that this behaviour again happened on February 4, 2017, at approximately 9:30pm, which the tenants approached the new renters by knocking and ringing the doorbell. When the male renter opened the door and closed it as they did not want to engaged, the tenants again started to continuously knock and ring the doorbell. Counsel submits the new renters were being secretly videotaped by the tenants at the time.

Counsel submits the tenants called the police, who showed up at the property at about 10:00pm. Counsel submits that the tenants were warned that they were not to have any contact with the new renters as their behaviour was now boarding criminal harassment.

Counsel submits that even after the tenants were warned that the new renters have had unwanted items posted to on their doorsteps. The tenants still engaging in harassing behaviour and continue to interfere with the new renters rights to the paved parking area. Counsel submits it would be unfair and unreasonable to wait for the effective date of a 1 Month Notice to come into effect.

Filed in evidence are three affidavits from neighbors.

The affidavit of DD, lives next door to the subject property. The affidavit in part reads,

“5. On or about, February 2, 2017, at around 9:30PM, I heard and then witnessed the Downstairs Tenants confronting the new tenants who had just moved in upstairs... From inside my house, I heard shouting and banging coming from the next door. The shouting sounded like the voice of one of the Downstairs Tenants who had accepted the parking restriction notice.

7. A man came out into the driveway while the Downstairs Tenants continue to yell and swear at him to move his truck....”

[Reproduced as written.]

The affidavit of MP, lives directly across the street of subject property. The affidavit in part reads,

“3. On about February 2, 2017, at around 9:00 or 10:00 at night, I heard a female voice shouting from across the street.

...

6. On about February 4, 2017, at around 9:30pm. I saw one of the Downstairs Tenants knocking and ringing the doorbell at the front door of the Upstairs Tenants. The same man opened the door, and the two talked in normal voices for a brief time until he closed the door. When she rang the doorbell again, he re-opened the door briefly, then closed it again. She kept knocking on the door for about a minute more. I did not see the Downstairs vehicle at the house.

7. Later that night, shortly before 10:00PM, the police showed up. I saw them speak with the Upstairs tenant before speaking with one of the Downstairs tenants. ...”

[Reproduced as written.]

The affidavit of MW, lives across the street from subject property. The affidavit in part reads,

“2. Between around 9:00 and 10:00 PM on February 4, 2017, I was shovelling my driveway with my partner when I notice that one of the tenants who lives in the basement suite of the house ... was either taking pictures or videotaping the driveway and front door of the tenants who live upstairs.

3. She knocked and rang the doorbell for some time until a man answered the door. After a short conversation, the man closed the door. She continued knocking for a while after he had closed the door, before finally leaving.

5. Not long after, the police arrived....”

[Reproduced as written.]

Filed in evidence are affidavit from the new renters, The affidavit of ED which in part read,

2. About February 1, 2017, I moved into Upstairs Unit along with my partner, CD, and my two daughters age seven and ten. I am currently pregnant.

4. Around February 2, 2017, at 9:30 or 10:00 PM, shortly after getting into bed and my kids already asleep, I heard the doorbell ring along with several knocks at the front door.

5. By the time C... answered the door, the doorbell had been rung repeatedly and the knocking had become aggressive.

6. The moment he opened the door, I heard on of the downstairs tenants (who I now know as Ms. M...) yelling and swearing at him to “get the fuck out of the driveway because you can’t fucking park there.”

7. C... explained that he had the right to park there, but she kept yelling and swearing at him to move his truck. He grabbed his keys and headed outside to move his truck. He told her there was no need to keep yelling at him because he already agreed to move the truck. When she kept yelling, he said he would move it tonight, but not again as of the next day.

8. at that moment, I saw Ms.T..., come flying out of the vehicle parked in the street. She went straight up to C... in such an aggressive manner I believe she was going to punch him. I was scared for my partners safety.

9. Ms. G.. again told him to “get the fuck out of our spot and stay out”.

12. ... on February 4, 2017, C... and I arrived home after dinner and parked in the driveway. The Downstairs tenants’ vehicle was not there.

13. A few minutes later we got inside, I heard knocking at the door

14. C... again answered the door. Ms. M.... told C... it was her spot and he had to needed to move his truck. He told her it was his spot and he was allowed to park there. She kept telling him he had to move. He told her he was wasn’t going to move the truck, to which she responded that she would keep knocking until he moved it. He told her if she kept knocking, he would call the police.

15. When she kept knocking after he closed the door, I decided I was unwilling to subject my family to further harassment and intimidation. I called the police.

17. The police ... explained that they had warned Ms. M... that if the behaviour of the Downstairs continued, the police may return to lay criminal harassment charges leading to arrest.

18. On February 7, 2017, in the early morning, we found a copy of the Downstairs Tenants tenancy agreement taped to our front step. Someone had written on it works to the effect of: "We are legally allowed to park in the driveway; would you like your children treated this way?"

19. On February 8, 2017, around 2:00PM, C... and I returned home to find a copy of the Tenants' notice of parking restriction tape to our front step. Someone had hand-written along the top words to the effect: "you have no right to park there unless it goes to court."

[Reproduced as written.]

The affidavit of CD, reads in part,

6. When I opened the door MM, one of the two tenants living in the basement suite... began yelling and swearing at me that I had parked in her spot and that I had to move my truck immediately.

7. I told her that she had awakened up my children and go me out of bed, but that because I did not want to create a scene, I would move my truck.

8. I grabbed my coat, shoes, and keys, and began walking toward my vehicle. Ms. M continued yelling and swearing at me that I was not allowed to park there and that I better not do it again. ...

9: at that point, AT, the other tenant... came flying out of a the truck and approached me in a physically aggressive manner at the front doorsteps. Ms. M.. continued to yelling and swearing at me, stating if I did not move my truck, she would bang and ring the doorbell until I moved it.

10. I found the behaviour of both Ms. M and Ms. T ... to be disturbing, intimidating, and unnecessary.

12. Two evenings later, at about 9:00 or 9:30PM on February 4, 2017, I heard knocking at my door. ... I found Ms M.. waiting for me. ...She told me I needed to get out of her parking spot, or that I needed to call the police. I told her that the way she dealt with me the other night was unacceptable. She again told me to move my truck, and said she

would not stop banging until I moved the truck out of the parking spot.... She continued knocking for almost a minute more.

14. I was initially surprised that during the incident on February 4, 2017, Ms M's behaviour was much more calm then during the previous encounter, when she had engaged in yelling, swearing and aggressive banging on my door, I initially though she decided to be more reasonable in her approach, but later discovered she had been secretly video-recording the interaction.

15. ... I discussed the situation with my partner. We both felt harassed and intimidated. My partner called the police."

[Reproduced as written.]

Counsel submits the tenant have unreasonably disturbed the new renters, by banging on their door, yelling and swearing at them The tenants have significantly interfered with the renter rights to park on the property after they have be given proper Notice restricting their service.

The tenant confirmed that that they attended at the property on February 2 and February 4, 2017, as described by counsel. The tenant confirmed they attached documents to the upper residents' steps after the police attended. The tenant testified that they "absolutely" are continuing to park on the pave driveway as the landlord sent them the Notice by email which voids the Notice.

The tenants submit a USB video, which they said support there was no aggression by Ms. M's on February 4, 2017. While the audio does not show Ms. M's yelling or swearing; however, It clearly shows that she was unreasonable disturbing the other renters, by continuous knocking on the door after they were aware they were not welcomed and the conversation had ended.

Analysis

Section 56 of the *Act* allows a landlord to request an order of possession to end the tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under Section 47 (1 Month Notice to End Tenancy for Cause) if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk;
 - iv. engaged in illegal activity that
 - a) Has caused or is likely to cause damage to the landlord's property,

- b) 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
- c) Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- v. caused extraordinary damage to the rental unit or residential property;
- b) And it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under Section 47 to take effect.

Under section 27(2) of the Act, the landlord may terminate or restrict a service provided under the terms of the tenancy agreement. The notice must be in the proper form.

I am satisfied, based on the evidence of the landlord that the tenants were provided the Notice to restrict their parking access, dated November 30, 2016. I find the Notice is in the proper form. Although the form was sent by email and not in accordance with 88 of the Act, I am satisfied it was sufficiently given pursuant to section 71(2)(c) of the Act, as the tenants admitted it was received in an email dated December 6, 2016.

I am satisfied that on February 2, 2017 at approximately 9:30PM, that the tenants did significantly interfere with and unreasonably disturb the new renters, by knocking and ringing their doorbell. This action woke the new renters and their children. The behaviour of the tenants continued as they then began to yell, scream and swear, until the new renter moved their vehicle for the paved parking area. This is supported by affidavits provided neighbours whom could hear the tenants yelling.

I am satisfied that on February 4, 2017, that the tenants again significantly interfere with and unreasonably disturb the new renters. The tenants attend the residence of the new renters at approximately 9:30am.

While the USB video recording submitted as evidence by the tenants does not show the tenants yelling; however, this is more likely than not because they were recording their own behaviour.

The video recording, does show that the tenant's behaviour is unacceptable, which significantly interferes and unreasonably disturbs the other renters, as the tenant continued to harass the renters by continuing to knock on their door after the new renters had ended the conversation.

I find the tenants' actions are unjustified, unreasonable and aggressive. At no time do the tenants have the right to harass other occupants or renters, simply because they have a dispute with the landlord.

Further, on February 4, 2017, the police attended at approximately 10:00 PM, and the tenants were informed they should have no further contact. However, the tenants continued to harass the new renters regarding the parking area by posting copies of their tenancy agreement and a copy of the notice to restrict services on their stairs.

While in normal circumstance a 1 Month Notice to End Tenancy for Cause, would be sufficient for a parking dispute; however, I find in this case the tenants' behaviour to the other renters was unreasonable, unprovoked and unacceptable.

I am satisfied that it would be unreasonable, and unfair to the landlord or other renters of the residential property, to wait for a notice to end the tenancy under Section 47 to take effect

It is clear that the tenants continued to harass the upper renters after the first incident, by significantly and unreasonably disturbing them. There has been police involved because of the disturbances and the tenants have not made any reasonable efforts to correct their behaviour.

The tenants continue to park in the area that they feel they are entitled to, although they have no legal rights to that portion of the property as the landlord complied with section 27 of the Act.

Therefore, I grant the landlord's application to end the tenancy early and obtain an order of possession.

At the hearing, the landlord agreed to continue the tenancy until March 24, 2017. I grant the landlord an order of possession effective at **1:00 PM on March 24, 2017**. This order may be filed in Supreme Court and enforced. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

I also find the following orders are appropriate.

I order that for the remainder of the tenancy the tenants are not to park on any portion of the paved driveway. Should the tenants fail to comply with my order, the landlord is entitled to have the tenants' vehicle removed. The **tenants are cautioned** that costs of such removal are recoverable from the tenants.

I further order that for the remainder of the tenancy the tenants are to have no contact directly or indirectly with the landlord or the upper renters or their children. Except through the landlord's legal counsel as previously directed to by the landlord.

Conclusion

I find the landlord is entitled to an order of possession effective on the above noted date. A copy of this order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: March 21, 2017

Residential Tenancy Branch

