



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 for an order to end the tenancy early and obtain an Order of possession pursuant to section 56 of the Act. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Has the landlord established that this tenancy should end early and an Order of Possession be provided under section 56 of the Act?

Background and Evidence

The tenancy started August 1, 2014 on a month to month basis. The tenant is currently required to pay rent of \$1,063.00 on the first day of every month.

The landlord requests an early end of tenancy due to the following circumstances, as put forth by the landlord:

- The tenant knocked on the door of the adjacent rental unit a number of times to complain of noise from the neighbouring tenant's child. One such time was witnessed by the landlord and on two or three occasions the landlord received complaints from the neighbouring tenant. The landlord did not have a record of the dates the neighbouring tenant complained about the tenant's conduct.
- The landlord spoke with the tenant in person on one occasion to request the tenant refrain from approaching the neighboring tenant. The landlord did not know the date she had this conversation with the tenant.

- The neighbouring tenant gave notice to end the tenancy because of the tenant's repeated complaints regarding noise. This was evidenced by an email written by the neighbouring tenant. In the email the neighbouring tenant described how the tenant was "always" knocking on her door but only described two dates in particular.
- In August 2017, the landlord found a replacement tenant for the adjacent and while the new tenant was preparing to move in her friend came by with her children. The tenant came into the hallway and angrily stated he did not want any children around. This was evidenced by a letter purportedly written by the replacement tenant. In the letter, the tenant's statement was described as "oh I heard a kid sound" and questioned whether she was moving in. The landlord submitted that the new tenant informed the landlord that she did not wish to proceed with the tenancy based on the tenant's conduct.
- The landlord found a couple who do not have children to rent the adjacent unit in mid-September 2017 but the landlord wants to preserve the right to rent a unit to tenants with children.

The tenant acknowledged that he knocked on the door of the adjacent unit on two occasions to complain about noise from the child. The tenant acknowledged the landlord spoke to him once about the matter of noise that children make but he denied the landlord told him to stop approaching the neighbouring tenant.

The tenant acknowledged that in August 2017 he heard a lot of noise coming from the hallway and he went into the hallway. According to the tenant he asked "is someone moving in?" before he went back into his rental unit.

The tenant was of the position that much of the landlord's versions of events are false and the landlord seeks to evict him because she does not like him. I asked the tenant to expand on this but his response was convoluted and hard to understand. It was not overly relevant so I did not request any further clarification or seek a response from the landlord.

Both parties attempted to provide submissions as to what is considered acceptable noise levels from a child; however, I declined to hear such submissions as they are largely irrelevant. As I informed the parties, at issue in this case is the tenant's conduct in response to a disturbance he experienced.

Upon hearing from both parties, I orally provided my findings to the parties that the circumstances of this case do not warrant an order for early end of tenancy that is

provided under section 56 of the Act. The landlord acknowledged that these circumstances may not warrant an early end of tenancy under section 56 of the Act, but maintained the position that the tenant must not interfere with other tenants and the landlord's lawful right to rent to tenants who have children. I informed the parties that under the Act I had the authority to issue orders to a party. The landlord requested that I issue the tenant an order for him to cease approaching other tenants if he has a complaint and to make the complaint to the landlord, preferably in writing.

Analysis

Section 56(2) of the Act permits the Director, as delegated to an Arbitrator, to make an order to end the tenancy on a date that is earlier than the effective date on a 1 Month Notice to End Tenancy for Cause had one been issued. In order to grant an order to end the tenancy early I must be satisfied that the landlord has cause to end the tenancy and the circumstances are so significant or severe that it would be unreasonable to wait for a 1 Month Notice to take effect. Below, I have reproduced section 56(2) of the Act:

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

- (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;
- (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 residential property, and
(b) 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 [landlord's notice: cause] to take effect.

[My emphasis added]

The landlord bears the burden to prove the tenant has acted in such a way as to warrant an order to end the tenancy earlier than by way of a 1 Month Notice. The burden is high as this provision is intended to apply in the most severe of circumstances.

In this case, it is undisputed that the tenant took it upon himself to approach other tenants when he is disturbed by noise coming from another tenant's child or child of another tenant's guest. Whether his complaints are valid or not, the tenant must not in turn disturb or interfere with other tenant's right to privacy, or use and enjoyment of their unit and common areas. Rather, if the tenant has a complaint about the conduct of another tenant, occupant, or guest the tenant should take his concerns to the landlord so that the landlord may investigate and take corrective actions as necessary and appropriate.

Where a landlord receives complaints about a tenant's conduct I find it reasonable to expect, in many circumstances, that the landlord would notify the tenant that their conduct is disturbing others and give the tenant notice to cease such conduct. The tenant's conduct in this case, approaching other tenants with his complaints, may have been disturbing to other tenants but I was provided unsupported and opposing testimony that the landlord had orally instructed the tenant to cease contacting other tenants directly. Nor did the landlord follow up with a written notice to the tenant. I am of the view that had the landlord clearly instructed the tenant, preferably in writing, to cease approaching other tenants with his complaints and to approach management instead the tenant's offending conduct may be ceased much sooner.

While the tenant's conduct may have been disturbing to other tenants, I find the circumstances of this case are not so significant or severe that it would have been

unreasonable for the landlord to have waited for a 1 Month Notice to take effect, if there was sufficient cause to end the tenancy. Therefore, I find the landlord did not satisfy me that the tenancy should end early under section 56 of the Act and I dismiss the landlord's application.

Having heard undisputed testimony that the tenant has approached other tenants when he is disturbed by noise, which I accept is likely disturbing to other tenants, I issue an order to the tenant pursuant to the authority afforded me under section 62 of the Act as follows:

I ORDER the tenant to immediately cease approaching other tenants of the property, in any way, for the purposes of conveying he is disturbed by noise and to take complaints he may have directly to the landlord, preferably in writing.

As clarity for the tenant, a landlord has the authority to delegate activities of a landlord to an agent, manager, or the like. Where a landlord has delegated management activities to an agent or manager, the tenant's complaints should be directed to the landlord's agent or manager

Conclusion

The landlord's application for an early end of tenancy and Order of Possession under section 56 of the Act is dismissed.

I have issued an Order to the tenant with this decision.

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: November 01, 2017

Residential Tenancy Branch