



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking an Order of Possession ending the tenancy earlier than a notice to end the tenancy would take effect, and to recover the filing fee from the tenants for the cost of the application.

Both landlords and both tenants attended the hearing and both landlords and one of the tenants gave affirmed testimony. The parties were also given the opportunity to question each other.

Issues with respect to service or delivery of evidence were raised, and the landlords deny receiving any evidentiary material from the tenants. One of the tenants testified that the evidence was sent to the landlords by registered mail on December 21, 2017 and orally provided a tracking number assigned by Canada Post. The tenants were permitted to provide to me proof of such service after the hearing had concluded. I have now received 2 Canada Post cash register receipts bearing the date of December 22, 2017 and 2 Registered Domestic Customer Receipts, the same day that the Residential Tenancy Branch received the evidence. In the circumstances, although the landlords have not received it, the tenants have provided it in accordance with the Rules of Procedure, and all evidence of the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the landlords established that an Order of Possession in favour of the landlords should be granted ending the tenancy earlier than the tenancy would end if notice to end the tenancy were given, because it would be unreasonable to wait for a notice to end the tenancy to take effect?

Background and Evidence

The first landlord (SM) testified that this fixed term tenancy began on March 1, 2016 and expired on February 28, 2017 and was renewed for another fixed term to February 28, 2018 at which time the tenants must move out of the rental unit. A copy of the tenancy agreement with the renewal initialled by the parties has been provided as evidence for this hearing. Rent in the amount of \$2,900.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,450.00 as well as a pet damage deposit in the amount of \$1,450.00, both of which are still held in trust by the landlords. The rental unit is a single family dwelling, however the building also has 3 other 1-bedroom suites, all of which are tenanted, and the landlords do not reside on the property.

The landlord further testified that another hearing between the parties is scheduled for January 18, 2018 concerning applications made by the landlords and by the tenants. In that dispute the landlords have applied for an Order of Possession for unpaid utilities and a monetary order for damage to the rental unit, and for damage or loss under the *Act*, regulation or tenancy agreement. The tenants' application seeks an order cancelling a notice to end the tenancy for unpaid utilities, for monetary compensation for damage or loss and for the cost of emergency repairs, an order that the landlords comply with the *Act*, regulation or tenancy agreement and make repairs to the rental unit, and for an order reducing rent for repairs, services or facilities agreed upon but not provided.

The landlords seek to end the tenancy early due to concerns of safety for other tenants. Neighbouring tenants in the rental building have also complained about a lot of noise and violence. One of the tenants is drunk a lot and police have been on site several times. The landlords went to the rental unit a couple of times due to complaints of other tenants but the tenants don't answer the door and pull the blinds. Other tenants complain of not feeling safe and want to move out because of the disturbances. Four others have broken their leases due to the same reasons. Neighbouring tenants are fearful and disturbed at night and can't sleep. Complaints from neighbouring tenants include sounds of anger and violence, banging, thumping, screaming, banging on walls, yelling and the TV at an unreasonable volume. One of the tenants has been knocking on doors of neighbouring tenants while intoxicated with threats of having the District close down the rental suites. The tenants also had 20 strangers going in and out who went to the back of the property going through another tenant's shed. That tenant confronted them. Letters from other tenants have also been provided as evidence for this hearing, describing disturbances and feeling unsafe.

Police are monitoring and have told other tenants that they will attend for any calls. The landlord still doesn't know who resides in the rental unit and the landlord was told by other tenants that the tenants' children have been removed from the rental home by the Ministry and that the tenant had been yelling and the kids were screaming. The neighbouring tenant also told the landlord that he or she heard the tenant constantly intoxicated and abusing the children.

The garage door has also been damaged, and photographs have been provided, as well as a move-in condition inspection report showing the garage was in good shape at the beginning of the tenancy.

The tenancy agreement specifies one pet, and the tenants also acquired a rabbit which was eaten alive by a wild animal leaving a trail of remains leading all the way to the laundry room. The tenants have chosen to ignore the tenancy agreement and a bear got the rabbit which was kept in a rabbit hutch on the rental property.

The second landlord (AM) testified that he has talked to the tenants about the complaints of other tenants, without success. On November 28, 2017 the landlords received a formal complaint from another tenant and have to act upon it for the safety of others. The letter confirms that tenants are scared. Others that have moved said that it was because of the tenants' disturbances. Today the landlord received another text from another tenant about feeling unsafe, and that the writer needs to make a decision about her tenancy.

The rabbit was not taken care of by the tenants, and the landlords told the tenants to remove it, and it got eaten alive.

The landlords inquired about the cost to replace the garage door and it will cost almost \$4,000.00. The landlord also fears further damage.

The tenant (CG) testified that they are good tenants and pay rent on time, and the rental unit is currently occupied by the tenants, their children and one other person.

The tenant also testified that one of the other tenants moved out because of surgery, and denies that there has ever been a party. The tenant has read the landlord's material and disputes another tenant's letter provided as evidence by the landlords that on December 3, 2017 the writer was awoken at 3:00 a.m. to noises from the tenants' rental unit. The tenants are always in bed by 10:30. The tenant also denies that the tenant was topless on the staircase and made a lewd gesture to the writer.

The tenant does not drink at all and testified that the police have not attended the rental property for 7 months and were there in the summer due to a break-in.

The tenant's daughter had a rabbit, and the tenancy agreement specifies one pet inside. The rabbit was kept outside. Bears are primarily around due to garbage, not the rabbit. The tenants were going to re-purpose it.

The tenant has no idea of what happened to the garage door and testified that it was not pointed out during the move-in condition inspection, and perhaps was damaged at the beginning of the tenancy. It functioned, and that's what the tenant believed she was signing in the report, and it still functions.

The landlords want the tenants to move out because the tenant has been insistent about getting gas and hydro out of the tenant's name because the tenants are paying for all tenants' utilities and nothing has been reimbursed. The tenancy agreement specifies that the tenants pay 70% of utilities, but the tenant wasn't aware at the time the tenancy agreement was signed that there were 3 other suites.

Analysis

The *Residential Tenancy Act* allows a landlord to apply for an Order of Possession ending a tenancy earlier than a notice to end the tenancy would take effect in certain situations, if 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 to take effect.

In this case, the landlords did issue a notice to end the tenancy. The tenants have disputed it and the hearing is scheduled for January 18, 2018. It is not up to me to determine whether or not the landlords had cause to issue it, but whether or not an Order of Possession should be granted prior to the hearing of that dispute. In order to be successful, the landlords must have compelling evidence that since its issuance, the tenants have caused extraordinary damages, or have significantly interfered with or unreasonably disturbed another occupant, or seriously jeopardized the health or safety or a lawful right or interest of another occupant, and that it would be unreasonable, or unfair to the landlords or other occupants to await that hearing.

I have reviewed the evidentiary material of the parties, and particularly the letters from other tenants. It is very clear that although the tenant denies all accusations, the disturbances continue despite calls to police. I also find it disturbing that the tenants would leave a rabbit in a cage outdoors in an area known for wildlife, and the remains of the rabbit all over the yard.

I am satisfied that such disturbances will continue until the tenancy ends, and that it would be unreasonable for the landlords or other tenants to wait for the hearing on January 18, 2018. I grant an Order of Possession in favour of the landlords on 2 days notice to the tenants.

Since the landlords have been successful with the application the landlords are also entitled to recovery of the \$100.00 filing fee and I grant a monetary order in favour of the landlords in that amount.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenants.

I hereby grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00.

This order is final and binding and may be enforced.

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: January 12, 2018

Residential Tenancy Branch