



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACE AGENCIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This decision is in respect of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The landlord seeks the following remedies:

1. an order ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47, pursuant to section 56 of the Act;
2. an order of possession pursuant to section 56 of the Act; and,
3. an order for compensation for the filing fee pursuant to section 72 of the Act.

A dispute resolution hearing was convened on February 5, 2019, and the landlord's agent (hereafter "landlord") attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenants did not attend.

The landlord testified that the Notice of Dispute Resolution Proceeding package was served on the tenants on January 15, 2019, by being taped to the tenants' door. Based on the above I find that the tenants were served the Notice of Dispute Resolution Proceeding in compliance with section 89(2)(d) of the Act.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure*, under the Act, and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Is the landlord entitled to an order ending the tenancy under section 56 of the Act?
2. If yes, is the landlord entitled to an order of possession?
3. Is the landlord entitled compensation for the filing fee?

Background and Evidence

The landlord testified that they took over as property managers for the owner of the property (a two-level residential house) in early to mid-December 2018 to help deal with the property and the tenants. The landlord did not have any background information in relation to the tenancy such as when it started or what the rent was. However, she testified that they tried contacting the tenants (who reside in the lower, basement level of the house) on multiple occasions to sign a tenancy agreement and to collect rent, which they have not paid. According to the landlord, one of the tenants has already left. There is one person residing upstairs, separate from the tenants.

The basis for the landlord's application to end the tenancy early is that there has been since December 2018 (when the upstairs tenant brought the issues to the landlord's and owner's attention) a significant amount of disruption and disturbance from the tenants. There is a significant amount of yelling and screaming. The municipal police have attended to the tenants on several occasions, and the police have commented to the landlord that "we know these guys." Indeed, one of the tenants made a false allegation against the upstairs tenant to the police in that the upstairs tenant had assaulted him. It is the position of the landlord that the safety of the entire house is at significant risk.

The landlord testified that she is afraid to attend to the house in person. One tenant is unpredictable and "could spring at you like a wolf spider."

In support of the landlord's application was submitted into evidence two photographs of the police attending to the residence, and 7 audio recordings, 3 of which include screaming by one of the tenants. The photographs and recordings were taken in mid-December 2018 by the upstairs tenant. In one recording, one of the tenants is heard screaming "you fucking piece of shit, you ruin[ed] everything. You know why? Because you're fat and ugly" and "You ruined it again! You ruined everything because you're such an insecure fat bitch!" While it is unclear to whom the tenant was directing his diatribe, the recording was clearly audible by the upstairs tenant, who at one point in the recording bangs on the wall.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the landlord seeks to obtain an order ending a tenancy early under section 56 of the Act.

Section 56 (1) of the Act permits a landlord to make an application for dispute resolution to request an order (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit.

In order for me to grant an order under section 56 (1), I must be satisfied that

- (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.

In this case, the tenants' ongoing yelling and screaming—to the point that the police have had to attend the residence on several occasions, including having to deal with a false allegation of assault by one of the tenants against the upstairs tenant—has significantly interfered with and unreasonably disturbed another occupant of the residential property. The upstairs occupant should not have to reside in a house where downstairs tenants are yelling, screaming, and conducting themselves in a manner such

that the police must keep coming. The audio recordings of the yelling and scream are clear proof of the tenants' wanton conduct. In addition, the upstairs occupant should not have to be the target of an alleged assault charge. This tenancy must end quickly.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for an order ending the tenancy and for an order of possession, pursuant to section 56 of the Act.

I grant the landlord a monetary order in the amount of \$100.00 for the filing fee.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenants and is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby the landlord a monetary order in the amount of \$100.00, which must be served on the tenants. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

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

Dated: February 5, 2019

Residential Tenancy Branch