



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAXIMUM INCOME PROPERTY MANAGEMENT
CORP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET FFL

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 the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:48 am in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 am. The landlord's managing broker ("**DM**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that DM and I were the only ones who had called into this teleconference.

DM testified that the tenants were served the notice of dispute resolution forms and supporting evidence package by registered mail on September 17, 2019, the same day he received the notice of dispute resolution form from the Residential Tenancy Branch. I find that the tenants are deemed served with these packages on September 22, 2019, five days after DM mailed it, in accordance with sections 88, 89, and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to:

- 1) An order of possession?

2) Recover its filing fees from the tenants?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of DM's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below.

The parties entered into a written, fixed-term tenancy agreement to rent the upper floor of a residential property starting November 1, 2018. Monthly rent is \$1850 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$925 and a pet damage deposit of \$925. The landlord still retains these deposits. The tenants continue to reside at the rental unit.

DM testified that on September 11, 2019, police attended the rental unit in response to shots being fired. He testified that two men in hoodies came to the rental unit and shot at the tenants. He testified that a friend of one of the tenants who was present had a gun and returned fire. No one was injured but a car outside the unit was hit. The police attended the rental unit shortly thereafter and removed the occupant of the lower floor into protective custody.

DM testified that he had no first-hand knowledge of the events but spoke with one of the tenant's girlfriend who advised him what happened. I am unsure if the girlfriend witnessed the events either.

DM also provided a copy of a Vancouver Sun article which states that there were shots fired on the same street as the rental unit the night of September 11, 2019. However, it sheds no light as to what transpired inside the rental unit.

DM attempted to obtain a copy of the police report, but his request was refused. He was told that the police cannot provide details because it would harm an ongoing investigation.

Analysis

Section 56 of the Act addresses ending a tenancy early. It states:

Application for order ending tenancy early

- (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.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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 most circumstances this is the person making the application.

So, the landlord must prove it is more likely than not that the tenants or someone they permitted onto the residential property engaged in one of the actions listed at section 56(2)(a). On the evidence before me, I find that the landlord has failed to prove this.

The landlord has provided no direct evidence of what transpired. He has only provided hearsay evidence, the reliability of which is uncertain. While I am sympathetic to his inability to obtain a police report, this does not relieve him of his evidentiary burden. He could have had someone with first-hand knowledge of the incident testify or provide a witness statement (for example, the tenant's girlfriend or the downstairs tenant). He did not.

I accept the fact that shots were fired at the rental unit on September 11, 2019. However, this does not necessarily mean that the tenants did anything wrong or in breach of the Act. There is no evidence to suggest that the tenants let the two shooters onto the residential property. There is no evidence to corroborate DM's testimony that the tenants' friend returned fire.

It is possible the tenants were victims of a crime and did nothing wrong. Without better evidence, I cannot be certain. As such, to issue an order of possession against the tenants may amount to an unjustified punishment for being the target of a crime.

Based on the foregoing reasons, I dismiss the landlord's application with leave to reapply.

As the landlord was not successful, I decline to order that the tenants repay the filing fee.

Conclusion

I dismiss the landlord's application with leave to reapply.

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: October 10, 2019

Residential Tenancy Branch