



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL ET**

This hearing dealt with the landlords' 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 tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:56 am in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 am. Both landlords 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 the landlords and I were the only ones who had called into this teleconference.

Landlord RT testified that the tenants were served the notice of dispute resolution forms and supporting evidence package by giving the package to tenant BB at the rental unit on January 17, 2020, one day after the landlords received the notice of dispute resolution form from the Residential Tenancy Branch. I find that the tenants were served with these documents on January 17, 2020, in accordance with sections 88 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 landlords, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claim and my findings are set out below.

The parties entered into a written, fixed-term tenancy agreement to rent a suite on the ground level of a residential property starting October 15, 2019. Monthly rent is \$1,500 and is payable on the first of each month. The tenants paid the landlords a security deposit of \$1,500. The landlord still retains this deposit. The landlords live on the upper level of the residential property. The landlords have three children. The landlords' daughter's bedroom is located on the ground level of the residential property but is separate from the rental unit.

The landlords testified that on January 9, 2020, police attended the residential property to execute a warrant against one or both of the tenants. The police asked the landlords for a key to the rental unit, but the landlords testified that the tenants had changed the deadbolt on the rental unit door and did not provide them with a copy of the key.

Six police cars and 10 police officers attended the residential property. Officers, at least one of whom was armed with an automatic rifle (the landlord entered a photograph taken by a neighbour of this into evidence), gained entry to the rental unit through the interior staircase connecting the upper level and the rental unit. They had to cut the chain securing the door between the two units.

The police officers entered the rental unit and arrested tenant JL. The police officers conducted a thorough search of the rental unit, but did not tell the landlords what, if anything, they found. Landlord AS testified he spoke to an employee at the courthouse who advised him that tenant JL was found to have had illegal weapons in his possession.

Tenant BB was not arrested. Subsequent to tenant JL's arrest, tenant BB advised the landlords that tenant JL had moved out of the rental unit.

The landlords described the arrest as traumatic to them and their family.

The landlords also testified that throughout the tenancy (both before and after tenant JL's arrest), the tenants unreasonably disturbed them.

The landlords testified that the tenants smoked drugs (they were unable to identify which ones) in the rental unit, and that the smell and the smoke was causing landlord RT respiratory problems. RT testified that she has a medical issue relating to her breathing which is exacerbated by the smoke. She testified that she spoke with the tenants asking them to stop smoking in the rental unit, but that they refused.

The landlord also testified that the tenants have visitors late at night and are very loud. The landlords testified that the tenants use the rental unit as a "clubhouse". Landlord AS testified that he has called the police three times since tenant JL's arrest for noise related issues with tenant BB. The landlords testified that their daughter (whose room is on the ground floor), cannot sleep in her room due to the noise. She now sleeps on the couch upstairs.

The landlords also submitted statements from a neighbor who wrote that the tenants' visitors "show up at varying times throughout the night" "revving their engines and driving much too quickly in the neighborhood." Another neighbour wrote provided a statement in which she characterized the driving of the tenants' visitors as "reckless".

The landlords testified that this conduct has not stopped since tenant JL's arrest, and that they are afraid for their and their families' safety.

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).

Based on the testimony of the landlords, I find that tenant JL has moved out of the rental unit. This fact is not relevant in determining whether the tenants engaged in an action listed at section 56(2)(a) of the Act. Per RTB Policy Guideline 13, tenants are jointly responsible for meeting the terms of the tenancy agreement and are jointly and severally liable for any damages that may arise from the tenancy. A breach of the Act or tenancy agreement by one of them may have the effect of ending the tenancy for both of them.

Based on the undisputed testimony of the landlords, I find that the landlords have proven on a balance of probabilities that the tenants have engaged in activities listed in section 56(2)(a). I find that the conduct of tenant BB subsequent to tenant JL's arrest amounts to an unreasonable disturbance of the landlords. I find that tenant BB has on repeated occasions hosted loud events in the rental unit which unreasonably disturbed the landlords in the middle of the night, and were so loud that police attendance was required, and that the landlords' daughter has to sleep on the couch upstairs.

Based on the landlords' testimony, I find that tenant JL was arrested by the police on January 9, 2020. I do not have any documentary evidence supporting their claim that he was arrested for possessing illegal weapons, and without such corroboration, I make no finding as to the reason for JL's arrest.

I find that the tenants have smoked inside the rental unit, despite requests from the landlords for them not to, and that this has caused health problems to tenant RT. I find that this amounts to an unreasonable disturbance.

I accept the landlords' evidence, corroborated by written statements from their neighbours, that the tenants have hosted visitors late at night, and the manner in which these visitors drive causes an unreasonable disturbance.

Additionally, as the unreasonable disturbances caused by tenant BB have continued on multiple occasions since the arrest of tenant JL, and that these disturbances cause the landlords' daughter to have to sleep on a couch upstairs, and there is no indication that tenant BB will cease such conduct, I find that it would be unfair to the landlords to require them to wait for a notice to end the tenancy under section 47 (that is, provide the tenants with one month's notice). I find that requiring this would prolong the discomfort and inconvenience caused by tenant BB to the landlords and their family.

Accordingly, I award the landlords an order of possession effective two days after they serve it on the tenants.

Pursuant to section 72(1) of the Act, as the landlords have been successful in their application, they are entitled to recover their filing fee from the tenants. Pursuant to section 72(2) of the Act, I order that the landlords may deduct \$100 from the security deposit in satisfaction of this amount. The landlords will continue to hold the balance of the security deposit (\$1,400) in trust for the tenants, and it must be dealt with in accordance with the Act at the end of the tenancy.

Conclusion

The landlords are successful in their application, and are entitled to an order of possession effective two days after they serve it on the tenants.

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 28, 2020

Residential Tenancy Branch