Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET**

Introduction

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.

This application was brought on an expedited basis, per Rule of Procedure 10.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlords were represented by counsel.

The landlords served the tenant with the notice of dispute resolution form and supporting evidence package on April 2, 2020. I find that the tenant was served with the required documents in accordance with the Act.

The tenant submitted no documentary evidence in response to the landlords' application.

Issues to be Decided

Are the landlords entitled to an order of possession?

Background and Evidence

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

The parties entered into a written, fixed term, tenancy agreement starting October 15, 2019 and ending October 1, 2020. Monthly rent is $1,550 and is payable on the first of each month. The tenant paid the landlords a security deposit of $750 and a pet damage deposit of $375, which the landlords continue to hold in trust for the tenant.

The rental unit is the upper unit of a split-level house. The landlords rent the lower unit to another occupant (the "**Lower Unit Occupant**"). The tenant testified that the tenancy agreement lists "AW" (who I understand to be his partner) as a tenant, but that she has since moved out.

The landlords allege that the tenant significantly interfered with and unreasonably disturbed the Lower Unit Occupant on a number of occasions.

The landlords allege that the tenant parked his vehicle in such a way as to prevent the Lower Unit Occupant from leaving the residential property to go to work. They submitted photographic evidence which depicts a vehicle blocking the road. The tenant stated that this was not his vehicle, but AW's. He also testified that he now knows that parking is not permitted by the city on the street where AW's car was parked during the winter (the time when the photos were taken), and he will not park his vehicle there next winter. He testified that it is permitted there during other months, and that, when he does park his vehicle there, it does not block the Lower Unit Occupant's vehicle. The landlords did not dispute this.

The landlords also allege that the tenant plays loud music "at all hours" which can be heard in the lower unit. In support of this, the landlords uploaded two videos taken by the Lower Unit Occupant where music can be heard playing, which appears to be coming from the rental unit. In these videos the Lower Unit Occupant is holding a decibel meter, which shows the music at a volume of approximately 50 decibels in the lower unit. Landlords' counsel advised me that this is the volume of a normal conversation. She argued that, as the tenant is located in a different unit, the music must have been playing a significantly louder volume in the rental unit.

The landlords also entered text messages from the Lower Unit Occupant to landlord CF into evidence showing multiple complaints about music and loud noise (such as stomping or children running) coming from the rental unit.

Landlords' counsel stated that the landlords repeatedly asked the tenant to curtail these actions and try to keep the noise down. She stated that the tenant's responses have been less than cooperative. She referred to one text message exchange starting at 8:52 pm between the tenant and the landlord, where, after receiving a complaint from the Lower Unit Occupant, the landlord asked the tenant to "keep the music at a respectful level." The tenant responded by denying playing music, stated that his family was "simply living day to day live" and, in any event, city bylaws only required him to be quiet from 11:00 pm to 8:00 am, so the Lower Unit Occupant did not have "grounds to complain".

The tenant argued that there was inadequate or no soundproofing between the rental unit and the lower unit, and as a result even the most trivial of noises would carry into the lower unit. He argued that he could not be responsible for this, and it was the landlord's responsibility to adequately soundproof the rental unit and the lower unit.

No documentary evidence was entered as to the sufficiency of the soundproofing. However, landlord CF testified that, on one occasion, he entered the lower unit to install an internet cable which required drilling a hole in the ceiling between the lower unit and the rental unit, and that the tenant was in the rental unit assisting him. He testified that he had to yell to make himself heard by the tenant. The tenant did not dispute this, rather he argued that the hole was drilled near the foundation, which would dampen the sound. He argued that this was not the case in other areas of the rental unit.

Landlord HM testified that she had resided in the rental unit at one point, and that she had never received noise complaints from the then-occupant of the lower unit. She argued that this was proof that there was sufficient soundproofing between the units. The tenant argued that this was not proof of that there was adequate insulation and that could be explained by the fact that HM was the landlord of the then-occupant of the lower unit, who may have been afraid to complain.

Beyond the music and the noise caused by children, the landlords allege that the tenant was involved in a very loud domestic disturbance late at night. A portion of this disturbance was recorded by the Lower Unit Occupant. In this recording the tenant is involved in a heated argument of a domestic nature with his partner and is yelling loudly. The tenant did not deny this argument occurred, but rather submitted that he is going to counselling, and that his partner no longer lives with at the rental unit.

The landlords also allege that the tenant is holding loud parties during the time when social distancing is in place (as part of an effort to combat the spread of COVID-19), and these parties are unreasonably loud. The tenant denied hosting loud parties but did admit that he hosted a birthday party for his daughter during the lockdown which was attended by two immediate members of his family (who did not reside at the rental unit).

The landlords' counsel argued that the tenant's pattern of misconduct is "escalating" and that the during the lockdown Lower Unit Occupant is afraid for his safety. She did not provide any basis in evidence for this fear and conceded that the tenant has never directly threatened the Lower Unit Occupant. She stated that, at one point, the noise had gotten so bad that the landlords paid for the Lower Unit Occupant to stay in a hotel for a weekend.

The landlords did not call the Lower Unit Occupant as a witness, but they did submit an email they received from him dated March 29, 2020 which stated:

> I understand the recommendations not to move during the covid pandemic, but it is in my best interest as I am no longer able to focus at work due to lack of sleep caused by constant disturbances upstairs. After the most recent domestic disturbance that occurred the night of March 19th, I no longer feel safe living here. However, I would like to request to mutually end my tenancy. If however the

tenants moved out upstairs I would continue my tenancy, but I have heard there is an eviction freeze at this time.

Landlords' counsel advised me that the Lower Unit Occupant and the landlords have not entered into a mutual agreement to end his tenancy and that, due to the COVID-19 pandemic, the Lower Unit Occupant is not looking for new accommodations at this point.

The tenant denied that his misconduct was escalating and cited his testimony that AW has moved out and that he is receiving counselling as evidence that disturbances such as the domestic dispute recorded are in the past.

Analysis

The authority to end a tenancy early is found at section 56(2) of the Act, which 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;
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> (v) caused extraordinary damage to the residential property, and
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> (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.
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> 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 landlords bear the burden of proof to show that the conduct of the tenant meet the threshold set out in section 56(2)(a) of the Act, and that the circumstances render it unreasonable or unfair to wait for a notice to end the tenancy to be issued, as required by section 56(2)(b).

I note that *Residential Tenancy (COVID-19) Order*, MO 73/2020 (*Emergency Program Act*) made March 30, 2020 (the "**Emergency Order**") explicitly permits an arbitrator to issue orders of possession on applications made pursuant to section 56 of the Act.

Section 56 not only requires the landlords show that the tenant significantly disturbed the Lower Unit Occupant, but also that it would be unfair or unreasonable to wait for a one month notice to end tenancy be served. This additional requirement is unique to section 56 and makes it markedly more difficult for a landlord to obtain an order of possession.

Section 56(2)(b) - Unreasonableness or Unfairness to Lower Unit Occupant

By operation of the Emergency Order, landlords are prohibited from issues notices to end tenancy for cause pursuant to section 47 of the Act. However, this does not have the effect of lowering the threshold for issuing orders of possession under section 56(2)(b). It would defeat the purpose of the Emergency Order to interpret it as to allow an order of possession to be granted if the criteria of section 56(2)(a) are met (which overlap substantially with the criteria of section 47), and the criteria of 56(2)(b) is only met by dint of section 47 not being available.

Accordingly, I understand the Emergency Order to require that section 56(2)(b) be applied without considering the fact that the ability to end a tenancy under section 47 is not available to a landlord.

Prior to the Emergency Order being made, the typical wait time for a hearing for an application for an order of possession pursuant to a notice to end tenancy for cause would be six weeks. Such an application could be filed as soon as 10 days after the notice to end tenancy for cause was issued. Accordingly, I interpret section 52(2)(b) to mean that it would be unreasonable or unfair to the Lower Unit Occupant to wait seven weeks for the tenancy to end.

Policy Guideline 51 considers application for an early end of a tenancy. It states:

> Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.
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> The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).
>
> Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:
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> - A witness statement describing violent acts committed by a tenant against a landlord;
> - Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
> - Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
> - Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

The landlords alleged the that the Lower Unit Occupant is afraid for his safety but did not state any basis for this fear. The Lower Unit Occupant was not called to give evidence, so I do not have the benefit of his testimony in assessing why he does not feel safe in the lower unit. As the landlords admit that the tenant has not threatened the Lower Unit Occupant, I am uncertain from where this fear arises.

I find that the conduct of the tenant disturbed the Lower Unit Occupant.

However, I find that such conduct does not rise to the level of kind of conduct listed in Policy Guideline 51. I find that, with hearing testimony from the Lower Unit Occupant, there is insufficient evidence before me to determine if the conduct rises to the level of "very serious breach" and are of a kind with an act of physical violence, criminal activity, or harassment.

I am not persuaded that the circumstances of this case are any different from a typical application to end a tenancy pursuant to section 47 for a tenant unreasonably disturbing another occupant. As such, I do not find it unfair or unreasonable for the landlords to have to wait seven weeks to obtain an order of possession.

This amounts to a failure to meet the threshold set out at section 56(2)(b).

Accordingly, I need not examine if the actions of the tenant *significantly* disturbed the Lower Unit Occupant or if the cause of this disturbance was attributable to a lack of

soundproofing between the units. I explicitly make no findings as to whether the landlord has satisfied the requirements of section 56(2)(a).

Conclusion

I dismiss the landlords' application, without 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: April 16, 2020

Residential Tenancy Branch