



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on March 18, 2020, wherein the Landlord sought an early end of tenancy and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 9:30 a.m. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord was assisted by legal counsel (K.T.) and the Tenants were assisted by a legal advocate (E.N.).

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord confirmed the rental unit is the basement suite in a home he owns. The Landlord's Application for Dispute Resolution failed to indicate the specific unit, instead the street address was used. Section 64(3)(c) of the *Residential Tenancy Act* allows me to amend an Application for Dispute Resolution; as such, I amend the Application to correctly note the rental unit as the basement suite.

The Landlord's lawyer and the Tenants' advocate confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Landlord entitled to an early end to tenancy?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord testified that this tenancy began January 1, 2020. Monthly rent is \$1,550.00.

The Landlord stated that beginning in February 19, 2020 the Landlord has had issues with the police constantly coming to the house. In his Application he noted that the police attended due to arguments between the Tenants. During the hearing the Landlord stated that on February 21, 2020 the police also attended the lower unit due to Tenants smoking cannabis. The Landlord confirmed that the rental unit is non smoking as set out explicitly in the residential tenancy agreement (a copy of which was provided in evidence).

The Landlord's Application indicated that conflict began with the Tenants due to issues with the payment of rent and smoking in the rental unit.

The Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Tenants applied to dispute that Notice and a hearing is scheduled for May 12, 2020 at 11:00 a.m. The file number for that matter is included on the unpublished cover page of this my Decision.

The Landlord confirmed that the rental unit is a basement suite in a home that he owns; he lives upstairs with a roommate. He stated that his issue with the Tenants' smoking is that his roommate is very allergic to smoke, hence why the rental unit is non smoking.

The Landlord sought an early end to tenancy as he alleges that he and his 70 year old mother were assaulted by the Tenants. The incidents occurred on March 8, 2020 and March 12, 2020.

The Landlord testified that on March 8, 2020, the Tenant's dog snuck into the Landlord's unit. The Tenant, P.S., came to get her dog and kicked in the door and caused damage. A photo submitted by the Landlord shows the damage to the door caused by P.S. The Landlord stated that he was upstairs at the time and when P.S. came into his unit, she grabbed the Landlord by the neck and started pushing and shoving him. The Landlord stated that the Tenant was very angry and accused him of feeding her dog. The Landlord called the police and was informed by the police that charges against P.S. for mischief are pending.

The most significant issue giving rise to the Landlord's request occurred on March 12, 2020. The Landlord stated that his 70 year old mother was visiting on that day. The Landlord stated that he could hear the Tenants through the walls as they were being verbally abusive towards him. The Landlord's mother opened the door to talk to the Tenants at which time the Tenant, P.S., started punching and kicking the Landlord's mother. As the Landlord tried to help his mother, the other Tenant, K.B. struck the Landlord. The Landlord stated that K.B. had a cast on his hand and struck the Landlord in the face with the cast. The Landlord and then K.B. fell down the stairs.

The Landlord submitted photos of his mother and himself showing injuries to his face and legs as well as his mother's face.

The Landlord testified that he called the police, but the Tenants left before the police arrived. He further testified that he was informed by the police that they had recommended charges against the Tenants.

In response to the Landlord's claim, the Tenant P.S. testified as follows. In terms of the March 8, 2020 incident, she stated that the Landlord was feeding her dog food that made her dog sick and she asked the Landlord not to feed her dog. P.S. denied going into the Landlord's rental unit. She also denied striking the Landlord. She stated that the Landlord waited until her dog was done eating and then let him out. P.S. confirmed she got mad at him, but there was "nothing physical".

In terms of March 12, 2020, P.S. stated that when she came home, the Landlord and his mother were already yelling at K.B. through the wall. P.S. stated that the Landlord's 70 year old mother came into their rental unit and started pushing her. The Landlord's mother then "fell backwards and came at the Tenant and grabbed her by the hair".

The Tenant stated that the Landlord then “tried to attack her” and when he did, that’s when K.B. hit the Landlord. P.S. stated that she pulled P.S. off of K.B. and then ran to her son.

K.B. also testified. He stated that on March 12, 2020 he was home and could hear the Landlord who he described as “egging them on” through the walls. The Landlord then opened the door and let him and his mom into the “common area”. K.B. stated that he then saw the Landlord’s mother put her hands on P.S. and when he went to defend P.S., that’s when he and the Landlord fell down the stairs.

K.B. stated that if “the Landlord did not unlock the door nothing would have happened”. He also stated that the Landlord seems to think he can do whatever he wants with his house.

K.B. stated that to his knowledge the police attended on March 12, 2020, but he and P.S. and their child left before the police arrived “because they were scared”.

K.B. stated that they were the ones who were assaulted, and the Police refused to take his statement. He further stated he is making a complaint about the police.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 56 of the *Act* allows a tenancy to be ended early without waiting for the effective date of a one month notice to end tenancy if there is evidence that the tenant has breached their obligations under the tenancy agreement or *Act* and it would be unreasonable or unfair to wait for the effective date of a one month notice to end tenancy.

In this case, the Landlord alleges that he has been assaulted by the Tenant(s) on two separate occasions, and that his 70 year old mother was also assaulted. The Landlord further alleges that the Tenant, P.S., kicked in his door when she believed that he was feeding her dog. In support of this testimony the Landlord provided photos of the injuries he and his mother sustained as well as a photo of the broken door. The Landlord also provided police incident file numbers for these incidents. The Landlord also testified that to his knowledge charges are pending against the Tenant P.S. for her actions on March 8 and against both Tenants for their actions on March 12, 2020.

The Tenants deny the Landlord's allegations and claim that they were the ones who were assaulted by the Landlord and the Landlord's mother.

After considering the testimony of the parties, the evidence filed, and on a balance of probabilities I find the Landlord is entitled to an early end to this tenancy pursuant to section 56 of the *Act*.

I accept the Landlord's testimony and evidence that the Tenant, P.S., kicked in his door on March 8, 2020. I also accept his testimony that when she entered his unit, she physically assaulted him. I am persuaded by the Landlord's photo of his door as well as his affirmed testimony. I am also persuaded by the fact the Landlord contacted the police on this occasion and filed a formal report.

Where the evidence of the Landlord and P.S. conflicts, I prefer that of the Landlord's. I found him to be straightforward and consistent in his testimony in this regard. Further, it was clear from the Tenant's testimony that she was angry with him on that date, as she believed he was purposely feeding her dog food which caused her dog to be unwell. I find it more than likely that she was angered to the point she forcefully entered the rental unit and physically assaulted the Landlord.

I also accept the Landlord's testimony and evidence with respect to the events on March 12, 2020. On balance, I find it more likely that the Tenant P.S. assaulted the Landlord's mother in retaliation for the Landlord's mother entering the common area (which the Tenants described as part of their rental unit). I note that K.B. testified that none of the events would have happened had the Landlord and his mother not entered this area; this comment suggests the Tenant believed the events which followed were an appropriate response to the Landlord and his mother entering this area.

Again, where the evidence of the Landlord and the Tenants conflicts with respect to the events on March 12, 2020, I prefer the Landlord's evidence. Again, I found his testimony to be forthright and consistent. Conversely, I found the Tenant, K.B., to be evasive and not credible.

I am persuaded by the photos submitted by the Landlord that he and his mother suffered injuries as a result of the Tenants' actions on March 12, 2020. I am also persuaded by the fact the Landlord called the police on this date.

The evidence confirms that on March 12, 2020, the Tenants were aware the police had been called, yet left the scene before the police arrived. Presumably, had the Tenants been the *victims* of the assault, they would have remained at the scene to speak to the police. On balance, I find it more likely the Tenants were the aggressors and fled the scene to avoid possible criminal charges.

In sum, I find the Tenants have breached their obligations under the *Residential Tenancy Act* by significantly interfering with and unreasonably disturbing the Landlord, as well as jeopardizing the Landlord's safety. I also find that it would be unreasonable or unfair to wait for the effective date of a one month notice to end tenancy. I therefore grant the Landlord's request.

Pursuant to section 56 of the *Act*, I grant the Landlord an Order of Possession effective two (2) days after service. This Order must be served on the Tenants and may be filed and enforced in the B.C. Supreme Court.

Conclusion

The Landlord's request for an early end to tenancy is granted. The Landlord is entitled to an Order of Possession pursuant to section 56 of the *Residential Tenancy Act*. This Order shall be effective two days after service on the Tenants.

As the Landlord has been successful, he is also entitled to recover the filing fee. Pursuant to sections 38 and 72 of the *Act*, he may retain \$100.00 from the Tenants' security deposit.

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 17, 2020

Residential Tenancy Branch