



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

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.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:16 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. The landlord 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 landlord and I were the only ones who had called into this teleconference.

The landlord testified he served the tenant with the notice of dispute resolution form and supporting evidence package via email on May 20, 2020. He provided an email from the tenant responding to the service email. I find that the tenant has been served with these documents in accordance with the Act and the Director's Order dated March 30, 2020.

The tenant did not submit any documentary evidence in advance of the hearing.

Issues to be Decided

Is the landlord entitled to end the tenancy early and to an order of possession?

Background and Evidence

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

The parties entered into a written tenancy agreement starting May 1, 2019. Monthly rent is \$600 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$300, which the landlord continues to hold in trust for the tenant.

The landlord testified that the tenant rents a room on the ground floor of a three-floor single detached home. The tenant shares the ground floor with two other tenants (“**RF**” and “**KS**”) each of whom have their own room and share a common area. The landlord called RF and KS as witnesses at this hearing.

The landlord and his family live on the second and third floor of the residential property. These floors are completely separate from the ground floor, and the landlord does not share any amenities with the tenant.

The landlord testified that the tenant frequently and significantly disturbs the other occupants of the rental unit. He testified that the tenant plays extremely loud music in his room regularly and for long periods of time. He testified that the tenant often sings along with the music very loudly. He testified that sometimes he can hear the tenant on the third floor.

The landlord has asked the tenant repeatedly to stop such conduct, and reduce the volume of his music, or to wear headphones. He testified that the tenant refused these requests and argued that as long as he is not playing loud music at night, he can play his music at whatever volume he wants.

Both RF and KS’s testimony confirmed the landlord’s testimony about the frequency and severity of the tenant’s music. KS described it a “daily rock concert” and said it was impossible for him to relax while at home. KS’s room is next to the tenant’s and he testified that often it feels like the wall between their room is shaking from the music.

Both RF and KS testified that the tenant often acted like a bully towards them in the rental unit. RF testified that the tenant would order him to do chores and demand that he leaves the bathroom door closed and the toilet seat up. He testified that the tenant often directed childish taunts at the himself and KS to “take their medication” when they tried to confront him about his offensive behavior. RF testified that he is physically intimidated by the tenant and that the tenant often barrels his way through the rental unit, expecting the other tenants to get out of his way.

RF testified that the tenant has tried to run him over with his bicycle on two sperate occasions when RF is walking on the sidewalk.

Both KS and RF testified that the tenants conduct is so extreme that they intend to end their tenancies as soon as possible in the event the landlord’s application is unsuccessful.

Analysis

Early Termination of Tenancy applications are governed by section 56(2) of the Act, which reads:

- (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.

As such, the landlord must satisfy me, on a balance of probabilities, that the requirement of 56(2)(a) and (b) are met.

Based on the uncontroverted testimony of the landlord, RF, and KS, I find that the tenant unreasonably disturbed the RF and KS by regularly playing his music at an excessively loud volume. I accept the landlord's testimony that the tenant refuses to change his behavior or wear headphones. I accept KS's testimony that such disturbances are a frequent occurrence.

The argument that the tenant made to the landlord (that he can be as loud as he wants, so long as it is not at night) is incorrect. RF and KS have a right not to be unreasonably disturbed at all times during the day, not just at night. What a "unreasonable disturbance" might be may change depending on the time of day (for example, using a coffee grinder at 7:00 am might be reasonable, but using one at 3:00 am might not be), however in this case, the playing of music at a loud volume on a regular occurrence constitutes an unreasonable disturbance, no matter the time of day.

As such, I find that the condition at section 56(2)(a)(i) is met.

I also find that it would be significantly unfair to RF and KS to wait for a notice to end the tenancy under section 47. Such a delay is not appropriate, as both KS and RF have testified that they intend to vacate the rental unit as soon as possible, if tenant is permitted to remain. Given the level of disturbance, this is not an unreasonable position to take. It would be unfair for RF and KS to have to vacate the rental unit due to the actions of the tenant (which are themselves breaches of the Act).

Additionally, it would be unfair to the landlord to wait for a notice to end the tenancy under section 47, as the landlord would be deprived of the rental income from RF and KS due to the actions of the tenant.

As such, I find that the conditions at section 56(2)(b) is met.

The landlord is entitled to an order of possession in respect of the rental unit, effective five days after he serves this decision and attached order on the tenant.

Conclusion

Pursuant to section 56 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within five days of being served with a copy of this decision and attached order(s) by the landlord.

Residential Tenancy (COVID-19) Order, MO 73/2020 (Emergency Program Act) made March 30, 2020 (the “**Emergency Order**”) permits an arbitrator to issue an order of possession if the notice to end tenancy the order of possession is based upon was issued prior to March 30, 2020 (as per section 3(2) of the Emergency Order).

However, per section 4(3) of the Emergency Order, a landlord may not file an order of possession at the Supreme Court of BC unless it was granted pursuant to sections 56 (early end to tenancy) or 56.1 of the Act (tenancy frustrated).

The order of possession granted above is issued to section 56 of the Act.

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: June 9, 2020