Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

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; authorization to recover the filing fee for this application from the tenants pursuant to section 72.

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.

Landlord SH testified that he served the tenants with the notice of dispute resolution form and supporting evidence package by posting it on the door of the rental unit on June 19, 2020. Tenant AT confirmed receipt of the notice of dispute resolution package on this date. I find that the tenants have been served with the required documents in accordance with the Act.

AT testified that she served the landlords with documentary evidence on July 2, 2020 by placing it in their mailbox. SH denied receiving any documents for the tenants. AT testified that she dropped her documents off at the Residential Tenancy Branch (the "**RTB**") office in Burnaby on July 2, 2020. However, no documents have been uploaded to the internal document management system used by the RTB. Any documents dropped off at the RTB office are uploaded to this system.

As SH denied having received the tenants' documentary evidence and the tenants did not provide any proof that the these documents were served (such as a photograph of the documents in the landlords' mail box) and as the tenants' have not been uploaded to the RTB's document management system, I find that they have not been served in accordance with the Act. I declined to admit into evidence any documents of the tenants.

The tenants were permitted to give oral testimony as to the contents of the documents.

Issues to be Decided

Are the landlords entitled to:

1) an order of possession; and
2) recover their filing fee?

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 did not commit their tenancy agreement to writing, so the precise terms of the tenancy are in dispute. SH testified that he permitted the tenants to reside in rental unit for a month as a "trial run", and that, should it be successful, he would enter into a signed tenancy agreement. He testified that he was later advised by the RCMP that, as soon as he accepted rent and a deposit from the tenant, a tenancy agreement was created.

The tenants took the position that as soon as they moved into the rental unit, a tenancy agreement was formed.

The rental unit is a basement suite of a single detached house. The landlords live upstairs. SH testified the tenants moved into the rental unit on May 1, 2020. AT testified they moved in on May 5, 2020. SH testified that the monthly rent is $1,200 plus $200 for utilities. AT testified that it is $1,200 including utilities. The parties agree that the tenants provided the landlord a security deposit of $1,000 at the start of the tenancy, and no pet damage deposit. The landlords continue to hold the security deposit in trust for the tenants.

SH testified that the tenants are in rental arrears for June and July 2020. AT denied this.

AT testified that the relationship between the landlords and tenants has been fraught since the beginning of the tenancy. She testified that shortly after moving in, she had a couch delivered to the rental unit. She testified that she left the couch outside the rental unit overnight (she was too tired from a long day of cleaning the day it was delivered). The next day, she testified, the SH sent her a rude text message demanding that she "remove her shit" from the backyard. AT testified that she ceased communication with the landlords after this text message.

The landlords are not, however, seeking an early end to the tenancy on the basis of halted communications. Rather, SH testified that the tenants acted aggressively towards him or his family on three occasions.

SH testified that AT shoved his pregnant daughter on June 13, 2020. He testified that his daughter was visiting him from Edmonton and was studying in the home. He testified

that AT's children were very loud, and that his daughter knocked on the rental unit door and told AT to "shut up her kids". He testified that AT then pushed his daughter.

SH testified that he did not witness this incident.

AT denied shoving the landlords' daughter. She admitted that his daughter came downstairs to complain about the noise. She testified that the daughter was rude, and that she told the daughter that she should study at the library. She denied that there was any physical altercation.

The landlords' daughter did not attend the hearing or provide a written statement.

SH also alleged that the tenant TT (AT's brother) acted aggressively towards him on two occasions.

The first occurring when SH approached TT in the driveway of the rental unit to discuss the conduct of the tenants. He testified that TT "ran away" from him, and that SH called after him to come back and talk. SH testified that TT then "ran back" towards him and that SH felt threatened by this. He testified that he ran back to his house and the TT chased him inside.

TT did not provide any oral evidence at the hearing. However, AT denied that TT chased or threatened SH.

SH also alleged that TT confronted him in an aggressive manner after SH entered the rental unit to conduct an inspection on June 15, 2020. SH testified that he provided the tenants with 24 hours' notice of this entry via text message (no such message was entered into evidence). He testified that he heard noises from the rental unit that led him to believe that the tenants were damaging it, and he wanted to inspect it.

AT denied receiving any notice from the landlords about their entering the rental unit. She testified that SH entered the rental unit unannounced, and that she was not dressed at the time. She testified that, despite this, SH refused to leave the rental unit. She testified that TT confronted SH in order to get him to leave.

SH testified that he filed police reports regarding the forgoing incidents. However, these reports were not entered into evidence.

SH also testified that the tenants removed the deadbolt from the rental unit door, and later replaced it with one of their own. The tenants did not deny doing this but testified that they believed the landlord was entering the rental unit while they were gone, without their permission. She testified that money was missing from the rental unit.

Analysis

1. Tenancy Agreement

The tenants and the RCMP are correct. Notwithstanding that the parties did not sign a written agreement, the tenancy commenced when the tenants moved into the rental unit. As the issue is not before me and are not necessary to determine for the purposes of this hearing, I decline to determine the precise terms of the tenancy agreement (that, whether the monthly rent includes utilities, or the exact start date of the tenancy).

2. Early End to Tenancy

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.

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;
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> (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 landlords must satisfy me, on a balance of probabilities, that the requirement of 56(2)(a) and (b) are met.

RTB Policy Guideline 51 considers applications for an early end to 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.
>
> 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:
>
> - 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 point to three incidents of aggression from the tenants, as well as the fact that the tenants changed the lock on the front door, as the basis for ending the tenancy early. For each of the three incidents, the landlords have submitted no documentary evidence supporting their allegations. I have only SH's testimony to rely on when determining whether the tenants acted as alleged. In two of the three alleged incidents (that AT shoved the landlords' daughter and that TT chased SH) SH's testimony is denied or contradicted by AT's testimony.

In the face of contradictory testimony from AT and a lack of corroborating evidence, I find that the landlords have failed to discharge their evidentiary burden to prove that AT shoved their daughter or that TT chased SH.

AT admitted that TT confronted SH when SH entered into the rental unit. I have little evidence from either party as to the exact nature of the confrontation. However, what is not in dispute is the date on which the landlord entered the rental unit: June 15, 2020.

On that date, pursuant to section 8 of the *Residential Tenancy (COVID-19) Order*, MO 73/2020 (*Emergency Program Act*) made March 30, 2020 (the "**March Emergency Order**"), the landlord's right to enter a rental unit was suspended, notwithstanding any notice of entry given, unless the "the entry is necessary to protect the health, safety or welfare of the landlord, a tenant, an occupant, a guest or the public."

The landlords did not allege that the entry into the rental unit was required for any of these reasons. Accordingly, SH's entry was unlawful. I note that the March Emergency Order has since been repealed. However, as it was in force at the time of the landlord's entry, this fact does nothing to change the nature of SH's actions.

Given that SH's act of entering the rental unit was unlawful, and as there is no allegation of physical violence on the part of TT against SH, I find that it would not have been unreasonable for TT to act in a verbally aggressive manner towards SH upon SH's entry into the rental unit on June 15, 2020. As such, I find that TT did not "significantly interfere with, unreasonably disturb SH or seriously jeopardize the health, safety or lawful right of the landlords. The confrontation between SH and TT was entirely of SH's making, and it would be unjust to permit SH to obtain an order of possession on this basis. The alleged actions of TT fail to satisfy the requirements of section 56(2)(a).

Finally, while it may be a breach of section 31 of the Act for the tenants to have changed the lock on the front door of the rental unit, I find that the landlord has presented no evidence as to how such an act meets any of the requirements of section 56(2)(a) of the Act, or, if it does, why it would be unreasonable or unfair to the landlords to wait for a notice to end the tenancy under section 47 to take effect (as per section 56(2)(a) of the Act).

For these reasons, I find that the landlords have failed to prove on a balance of probabilities that the tenants have acted in such a way that the conditions of section 56(2)(a) have been met. Accordingly, I dismiss the landlords' application, without leave to reapply.

As the landlords have not been successful, I decline to order that the tenants reimburse them their security deposit.

3. Security Deposit

The parties agree that the landlords collected a security deposit of $1,000 from the tenants. The parties agree that the monthly rent is $1,200. The landlords allege that a further $200 is due for utilities, and the tenants deny this.

Section 19 of the Act states:

> **Limits on amount of deposits**

> **19**(1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.
>
> (2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

The maximum amount of a security deposit that may be collected by a landlord for a rental unit with a monthly rent of $1,200 is $600. Accordingly, by collecting a deposit of $1,000, the landlords have collected $400 more than they are entitled to collect.

Ordinarily, the tenants would be permitted (even without an order from the RTB) to deduct $400 from the amount of rent they owe. However, as the parties disagree as to the current rental arrears, such a deduction would likely confuse the situation.

Accordingly, I order the landlords to return $400 of the security deposit to the tenants immediately. I have attached a monetary order to this decision that may be enforced in the Provincial Court (Small Claims) of British Columbia in the event that the landlords fail to return the $400 as required.

Conclusion

I dismiss the landlords' application, in its entirety.

Pursuant to section 65 of the Act, I order that the landlord pay the tenant $400, representing the return of the portion of the security deposit that the landlord collected in breach of section 19 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: July 7, 2020

Residential Tenancy Branch