



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

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; 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 9:46 am in order to enable the tenants 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 that the tenants with two notices of dispute resolution forms and supporting evidence packages by posting them on the door of the rental unit on July 21, 2020. She submitted a signed and witness proof of service form (RTB Form 9) confirming this service. I find that the tenants are deemed served with these packages on July 24, 2020, three days after the landlord posted them, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 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 landlord and tenant RR entered into a written tenancy agreement starting February 1, 2020 (the "**Current Agreement**"). The rental unit is a basement suite of a single-detached house. Monthly rent is \$930 and is payable on the first of each month. The tenancy agreement does not require RR to pay any security deposit to the landlord. Tenant LB is not a party to the tenancy agreement.

Prior to entering into the Current Agreement, the landlord, RR, and LB were parties to a tenancy agreement to rent the upper floor of the residential property. This tenancy started June 1, 2019 (the "**Prior Agreement**"). LB moved out of the residential property in January 2020, following a domestic dispute with RR, and the landlord agreed to let RR move into the basement suite, end the Prior Agreement, and enter into the Current Agreement.

At some point in April 2020, LB moved into the rental unit with RR. This was done without the landlord's knowledge or consent. At the time, the landlord did not issue a notice to end tenancy for cause or apply for an order of possession due to the restrictions on evictions due to the ongoing COVID-19 pandemic.

The landlord testified that since LB moved in, there have been numerous disturbances reported to her by the current occupant of the upper unit ("**SS**"):

- 1) On May 1, 2020, the tenants were fighting with each other for hours, slamming doors. RR left the rental unit, got in his car, and revved the engine so loud it disturbed the whole neighborhood.
- 2) On May 5 and 31, 2020, the tenants had loud fights late at night which scared SS and her three children and were so loud that SS called the police.
- 3) On May 23, the tenants had loud fight, disturbing SS.
- 4) On June 1, 2020, RR threatened to assault SS when SS advised him that she had called the police in response to him "yelling and screaming" in the yard.
- 5) On July 17, 2020, RR was yelling at LB's mother, and has to be held back by LB. SS characterized the tenants as "out of control".

The landlord submitted into evidence copies of text messages sent by SS made contemporaneously with these events which document these events.

The landlord made a request under the Access to Information Act on May 8, 2020 for police records relating to the rental unit, but, as of the date of the hearing, she has not received any. A copy of this request and the acknowledge email was submitted into evidence.

The landlord also provided a written statement from SS in which she wrote:

I am finding it not just difficult to live in this house but am truly fearful of living here. I am worried about my kids because they do not deserve to be exposed to the fighting, vulgar language, and loud music caused by [the tenants]. They should do not [sic] need to hear grown adults act this way either. I am scared for our safety. I am paranoid that they will potentially harm my kids, myself my animals, or my property.

The landlord also alleged that the tenants were using cocaine on in the rental unit, in violation of the Rental Addition Agreement addendum to the Current Agreement signed by RR on January 1, 2020.

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 requirements of 56(2)(a) and (b) are met.

Based on the uncontroverted testimony of the landlord and the written statement of SS, I find that the tenants unreasonably disturbed SS by repeatedly fighting at loud volumes,

necessitating the police to attend the rental unit on more than one occasion, and by threatening to physically assault SS.

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 SS to wait for a notice to end the tenancy under section 47. SS write that she is “truly fearful of living” in the rental unit, and that her children are exposed to the tenants’ fighting and vulgar language. A delay to ending the tenancy would unfairly prolong such circumstances for SS. As such, I find that the conditions at section 56(2)(b) is met.

The landlord is entitled to vacant possession of the rental, effective two days after she serves this decision and attached order on the tenant in accordance with the Act.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, she may recover her filing fee from the tenants.

Conclusion

Pursuant to section 72 of the Act, I order that the tenants pay the landlord \$100 representing the return of the filing fee.

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

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: August 6, 2020

Residential Tenancy Branch