



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE BLOOM GROUP COMMUNITY SERVICES
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on August 13, 2020, wherein the Landlord sought an early end to tenancy pursuant to section 56 of the *Residential Tenancy Act* (the "Act").

The hearing of the Landlord's Application was scheduled for 9:30 a.m. on September 10, 2020. 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 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.

Issue to be Decided

Is the Landlord entitled to an early end to tenancy?

Background and Evidence

This tenancy began January 1, 2013. The Tenant currently pays \$348.00 in rent.

The Landlord's Building Manager stated that this 222-unit rental building houses approximately 240 senior and disabled tenants.

On the Application the Landlord indicated the reason for ending this tenancy early as follows:

[the Tenant] is engaging in activities that have put everyone in this seniors and disabled building at risk. [the Tenant] buzzed in 223 people from April 5th to June 4, 2020, even after receiving two very stern warning letters due to Covid-19, stating he would be evicted if this dangerous behaviour didn't stop immediately. [the Tenant] has continued with this behaviour and has buzzed in a total of 375 people between April 5th and July 24, 2020 when we issued a "One Month Notice to End Tenancy For Cause"

The Landlord also provided a copy of the 1 Month Notice to End Tenancy for Cause on July 24, 2020 (the "Notice"). The effective date of the Notice is August 31, 2020. The reasons cited on the Notice were as follows:

- the Tenant has allowed an unreasonable number of occupants in a rental unit;
- the Tenant or a person permitted on the residential property by the Tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk;
- the Tenant has engaged in illegal activity that has caused or is likely to
 - 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

J.F. testified that as a result of the pandemic, they closed the common areas of the building. He confirmed that they did not issue a general warning to the residents to limit the number of guests they allow in the building as he submitted the guidance provided by the provincial health authorities was clear.

J.F. stated that he sent two separate letters to the Tenant, including a warning letter and "final warning letter". In the warning letter sent April 17, 2020 the Tenant was advised as follows:

"It has been brought to our attention by other residents and neighbours that you have excessive traffic/visitors coming to and from your apartment. We are in the midst of a global pandemic and you are endangering the health and safety of the entire building by

not following social distancing directives from the government! This behaviour is unacceptable and MUST not persist if you wish to continue residing at [building name]. Please refrain from excessive traffic or we will take legal action to end your tenancy immediately.”

J.F. confirmed that there was no change in the Tenant’s behaviour and as a result the Landlord issued a second/final warning letter on June 12, 2020 in which the Tenant was advised as follows:

“Since the previous “Violation/Warning” issued on April 17, 2020, there has been no reduction in the excessive traffic coming to and from your apartment. We are still in the midst of a global pandemic and you are endangering the health and safety of everyone in the building, no further warnings will be issued. This behavior is unacceptable and MUST not persist if you wish to continue residing at [building name]. The next step will be moving forward with eviction through The Residential Tenancy Branch. Either STOP the excessive traffic or we will have no choice but to take the legal action necessary to end your tenancy.”

J.F. stated that every tenant has a fob and is able to allow guests to enter the building through the buzzer. The Landlord provided in evidence a “Buzzer Activity Report”. J.F. testified that at the time the Notice was issued the Tenant had allowed 223 people into the building according to the Buzzer Activity Report. J.F. further stated that from April 5 to June 4, 223, and from June 5 and July 24 the number jumped to 375.

J.F. also testified that they also have a camera which shows who is entering the building and this confirms the Tenant is allowing numerous people into the building. J.F. further stated that the Tenant throws his keys out the windows to his guests after hours. He testified that he received reports from other tenants about this and at one point the Tenant threw his keys out the window and they got stuck on an awning and the maintenance workers had to use a ladder to get them down.

The Tenant responded to the Landlord’s claim as follows. He stated that he believes the Landlord does not have grounds to end his tenancy. In terms of the Buzzer Activity Log, the Tenant noted that the activity shows the time a person is buzzed in, or when the Tenant enters the building himself; he further noted that the Buzzer Activity Log, does not record the number of *different* people entering the building.

The Tenant denied having many guests come by. He stated that ever since the beginning of his tenancy, he hasn’t had more than 12 different guests. He testified that while he knows a lot of people, he has few personal friends. He also stated that since

the pandemic, he has 2-3 guests who come by daily, which is well under the recommended "bubble".

The Tenant also noted that every time his dog, or his friend's dog has to go out, he, or his guest, exit and enter the building with the dog. The Tenant conceded that he has thrown his keys out the window to his best friend, L.T., but stated that he doesn't just throw his keys out to anyone, as he takes full responsibility for his guests at all time.

The Tenant claimed that his "buzzer activity" is actually lower than others. He noted that even if it were accurate, 375 entries in 112 days, would only be 3.34 guests per day, which is not excessive in any event. Again, he denied that these entries represent different guests as his guests enter and exit the building numerous times in a given day.

The Tenant stated that he doesn't know who has made complaints against him, as all of the letters he received from the Landlord had been redacted.

The Tenant also noted that there was another dispute, with another tenant in the building, which is to be heard on September 15, 2020. He claimed that he received the exact same letter which was submitted in this other dispute, suggesting the Landlord is using the pandemic as an excuse to evict people. He further stated that the Landlord has attempted to evict 20 other people from the building in recent months.

The Tenant also stated that he was not given any warnings, notices or letters or anything prior to the two letters which were provided in evidence.

The Tenant called L.T. as a witness. She confirmed that she is best friends with L.T. She also stated that she comes to the rental unit "quite often" as much as daily. L.T. confirmed that she does not have a fob and rather buzzes the Tenant to get into the building. She stated that they have breakfast together and sometimes they cook together at night. She stated that from her observations there are not many people coming to the rental unit, aside from herself and the Tenant's "friend/partner". L.T. stated that she has never witnessed the Tenant throw his keys out the window, except to her after 10:00 p.m. at night when she is out with the dogs. L.T. noted that she has a dog and takes her dog with her everywhere and sometimes she has to take the dog out repeatedly when she is in the building. L.T. also stated that she has never witnessed the Tenant let 9 people in the rental unit on a given day.

In reply, J.F. stated that he isolated the buzzer activity from fob activity such that the Buzzer Activity Report shows the Tenant's guest's access, not the Tenant's.

J.F. also stated that of the 375 entries on the buzzer, some are 9-10 people on some days and that doesn't include when the Tenant throws his keys out the window.

J.F. also noted that he believes that L.T. actually lives in the building. He also noted that he has personally witnessed the number of people and activity going in and out of the apartment.

Analysis

Under section 56 of the *Act*, a tenancy may only be ended early if the Landlord provides sufficient evidence that the Tenant has

1. significantly interfered with the Landlord or another occupant of the residential property;
2. seriously jeopardized the health or safety or lawful right or interest of the Landlord or another occupant;
3. put the Landlord's property at significant risk;
4. engaged in illegal activity that
 - a. has damaged or is likely to damage the Landlord's property,
 - b. has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or
 - c. has jeopardized a lawful right of another occupant or the Landlord; or
5. caused extraordinary damage to the residential property

and it would be unreasonable or unfair to the Landlord or other occupants to wait for a notice to end tenancy for cause to take effect.

In this case, the Landlord alleged the Tenant allowed 375 people into the rental unit over the course of approximately four months. The Landlord submits that in doing so, the Tenant has seriously jeopardized the health and safety of the other residents of the rental building due to the COVID-19 pandemic.

The Landlord issued two warning letters to the Tenant. The Landlord's representative conceded that the residents were not cautioned against allowing guests into the building during the pandemic, as they presumed residents would heed the recommendations of the Provincial health authority. Those recommendations include limiting the number of people with whom individuals have personal contact.

The Tenant submitted that the Buzzer Activity Report records the number of entries of his guests, not necessarily different people. He testified, as did his witness, that he only allows a small number of guests into the building on a daily basis. He further notes that even if the Landlord were correct that he had allowed 375 people (which he denies), that would be only 3.34 people a day, which the Tenant submits is not "excessive". The Tenant and his witness also testified that they leave the building regularly to take their dogs out. The Tenant testified that his guests also regularly sanitize their hands to limit the spread of COVID-19.

The Landlord failed to call any witnesses aside from the Building Manager. Although complaint letters were provided in evidence the content of those letters largely related to different matters. Additionally, although the Landlord referenced video footage of the entry area, no such footage was presented in evidence before me to show the number of different guests entering the building in a given day.

On balance, I find the Landlord has provided insufficient evidence to prove the Tenant has *seriously jeopardized* the health and safety of other occupants of the rental building. I agree with the Tenant that the Buzzer Activity Report does not prove he allowed 375 people into the rental unit, as it simply records entries. I accept his testimony that he has few personal friends, but that he sees them daily. I also accept his testimony, as well as his witness' that they frequently leave the building to care for their dogs.

Section 56 is a two-part test. The Landlord must not only satisfy me that the tenancy poses a risk to others or property but must also prove that it would be unfair or unreasonable to wait for a 1 Month Notice to End Tenancy for Cause to take effect. In this case the Tenant receive such a Notice and has applied for Dispute Resolution. Although the effective date of the 1 Month Notice has passed, I find that the earliest date the Notice could take effect is after the hearing of the Tenant's application is scheduled for September 29, 2020. I find that it would not be unreasonable to wait until the hearing of the Tenant's Application.

For these reasons I dismiss the Landlord's request for an early end to tenancy pursuant to section 56 of the *Act*. The validity of the 1 Month Notice to End Tenancy will be addressed at the hearing on September 29, 2020.

Conclusion

The Landlord's application is dismissed, with the effect that the tenancy continues until ended in accordance with 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: September 11, 2020

Residential Tenancy Branch