



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 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; 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 10:12 am in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 am. The landlord's property manager ("**SB**") 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 SB and I were the only ones who had called into this teleconference.

SB testified that she served each tenant personally with the notice of dispute resolution form and evidence on November 6, 2020. I find that the tenants were served with this package on November 6, 2020, in accordance with section 88 and 89 of the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession; and
- 2) recover its 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.

No copy of the tenancy agreement was entered into evidence. SB testified that the parties entered into a tenancy agreement starting October 1, 2020. Monthly rent is

\$1,050. The tenants paid the landlord a security deposit of \$525, which the landlord continues to hold in trust for the tenants. The rental unit is a two-bedroom apartment located in a larger apartment building.

SB testified that the shortly after the tenant moved into the rental unit “sketchy” individuals started appearing around the residential property. She testified that she saw these individuals go in and out of the rental unit. She testified she believed they were high on drugs at the time. She testified that she witnessed some of these individuals (although not the tenants) in the alley behind the rental unit with needles and matches. She believed they intended to use these to inject drugs.

SB testified that the tenants’ visitors would throw rocks at the windows of the rental unit to get their attention and to alter them to come down to let them in the building. She testified that other occupants of the residential property reported to her that the tenants’ visitors propped the front door to the apartment building with a rock on more than one occasion.

SB testified that shortly after the tenants moved in, other at least four other occupants have reported to her that there have been fights and screaming matches in the hallway of the floor of the rental unit. She testified that these incidents have disturbed the other neighbors significantly.

SB testified that she observed an unauthorized individual move into the rental unit with the tenants. He brought a bed with him. She believes this individual to be a drug dealer. She testified that, on October 30, 2020, she and the RCMP attended the rental unit and removed this individual from the rental unit. She testified that she observed a large amount of drug paraphernalia (including needles) in the rental unit. She testified that there was bike in the bathtub and that the stove element was left on, with nothing on it, and was glowing bright red.

SB testified that, prior to October 30, 2020, the RCMP has attended the rental unit on other occasions and spoken to the tenants. She does not know what the conversations were about.

SB testified that since the other occupant was removed, the disturbances have mostly stopped. There have been no more reports of fights or yelling, no more complaints about propped-open doors, and no more reports of drug use around the apartment building. She testified that visitors to the rental unit will still sometimes throw rocks or snowballs at the window, and on one occasion hit a neighbor’s window with a snowball. She testified that, on one occasion, she believed she saw a visitor to the rental unit who was high.

SB testified that after October 30, 2020, the residential property’s mailbox was broken into. She stated that this incident was captured on film and he has provided to the RCMP to investigate. She did not provide a copy of the video or the police report to the

RTB as part of her evidence package. She testified that the perpetrators are visitors of the tenants. She provided no corroborating evidence (such as videos, photos, police reports, or witness statements) to corroborate this assertion.

The landlord provided two witness statement both dated before October 30, 2020 from other occupants of the residential property which corroborates SB's testimony regarding the events before October 30, 2020.

Analysis

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;

(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 landlord has satisfied me, on a balance of probabilities, that the events which occurred prior to October 30, 2020 occurred as alleged. She provided multiple witness statements to corroborate her testimony regarding what she saw.

However, it seems to me that since the unidentified occupant was removed from the rental unit, the severity of the disturbances and conduct attributed to the tenant's guests have diminished server. As such, I cannot grant an early end to tenancy based on the pre-October 30 infractions, as they have stopped and it would therefore not be unreasonable or unfair to the landlord or other occupants to wait for a notice to end tenancy to be issued under section 47 of the Act (as set out at section 56(2)(b) of the Act).

I must then look to the post-October 30 conduct of the tenants or the tenants' guests. Based on SB's testimony, I do not find that the conduct which she was witnessed reaches level of conduct necessary to meet the requirement of section 56(2)(a). The

throwing of snowballs at the window of another rental unit is a disturbance, but it is a minor one, which does not warrant the tenancy to be ended.

I note that drug use, while illegal, does not meet the stringent requirement of the “illegal activity” section 56(2)(a). The “illegal activity” must also be accompanied by a negative effect or likely effect on the landlord or another occupant of the residential property. SM has not alleged any negative effect in connection with the drug use. Indeed, she has not testified that she has seen the tenants, or their guests, use drugs, only that one of the tenants’ visitors appeared to be on drugs. Such an observation is not sufficient to warrant an early end to tenancy.

If proven on a balance of probabilities that the guests of the tenants broke into the residential property’s mailbox and stole mail, this would likely rise to the level of illegal activity which warrants an end to tenancy (as it caused damage to the landlord’s property). However, indicated in Policy Guideline 51 above, the landlord must “provide sufficient evidence to prove the tenant or their guest committed the serious breach”. I find that the landlord has failed to do this with regards to the alleged break into the mailbox. I have only the testimony of the landlord that the alleged offenders were guests of the tenants. I have nothing to corroborate this. I understand that both a video of the incident and a police report exist. I would likely need one or both of those to be able to determine the identity of the alleged offenders.

As I cannot determine the identity of those the landlord alleges broke into the mailbox, I cannot determine whether or not these were guests of the tenants. Accordingly, I find that the landlord has failed to prove, on a balance of probabilities, that a person permitted on the residential property by the tenant has engaged in an illegal activity satisfying the requirements of section 56(2)(a) of the Act.

As the landlord has not been successful, I decline to order that the tenants reimburse it their filing fee.

Conclusion

I dismiss the landlord’s application, without leave to reapply.

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: November 27, 2020

Residential Tenancy Branch