



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bastion Development Westpoint Properties
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an early termination of the tenancy and an Order of Possession pursuant to section 56 of the Act, and to recover the cost of their filing fee.

The Tenant and an agent for the Landlord, K.K. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant said that she had received the Landlord's Application documents, as well as the Landlord's documentary evidence and had time to review it. The Tenant said that she submitted evidence to the RTB; however, she said she did not serve it on the Landlord. One of the Principles of Natural Justice is that a party to a dispute has the right to know the claim against them. Hearings before the RTB are conducted in accordance with the principles of natural justice as well as the Rules. As a result, I advised the Parties that I would not consider the Tenant's evidence, because the Landlord had not had an opportunity to review it prior to the hearing.

Preliminary and Procedural Matters

The Parties confirmed their email addresses at the outset of the hearing, as well as their understanding that the Decision would be emailed to both Parties and any Orders

sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession based on the early termination of the tenancy in accordance with section 56 of the Act?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began in 2014, with annual leases, until September 1, 2018, when the Parties agreed that the tenancy would operate on a month-to-month basis. The Parties agreed that the Tenant pays the Landlord a monthly rent of \$1,526.51, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$640.00, and no pet damage deposit.

The Landlord applied for dispute resolution for an early termination of this tenancy and an order of possession, saying that the Tenant poses an immediate and severe risk to the security of the residential property. In the hearing, the Agent said

We're not really sure what has happened here with the Tenant. The two theories are that the Tenant has provided access to a suspect who breaks in to the bike room, the storage area, the laundry room, doing damage there. That is in violation of the lease, as tenants are prohibited from allowing anyone access to the building that is not on the tenancy agreement, a family member or a guest.

The second problem is that the Tenant copied the fob and lost it and did not report it to Landlord. Perhaps the suspect found it and used it to break. There was a lot of damage to the property, and the loss of mountain bikes. This has jeopardized the security of the building.

The Tenant said:

I have communicated with [the Agent], about the fob. It is not in the tenancy agreement that I can't copy it. I copied it for personal use, because I needed a spare fob. I had previously lost keys before, and I didn't want to risk waiting 24 hours for the replacement. I was not given the buzzer code to have my phone be connected to the buzzer, so that's why I made a spare fob for myself.

I acknowledge that it is on my part that I dropped it, and someone picked it up, but I don't think I'm associated with someone who is a criminal.

The Agent cited clause 3 in the Schedule to the tenancy agreement, which Schedule was not in evidence before me. The Agent read the clause, which indicated that tenants may have additional keys and/or fobs provided by the Landlord for a cost.

The Tenant said that she has a copy of the Schedule in front of her. She said:

There is no indication that the additional keys or fobs must be purchased from the Landlord, which is why I presumed it is okay to create an extra copy, because it doesn't violate any of this. This merely states that I am capable of asking for additional keys.

The Agent said that this matter has been reported to the police, but that their investigation is ongoing, and the Landlord has not heard anything back from the RCMP.

When asked why it would be unreasonable or unfair to the Landlord or other tenants or occupants to wait for a One Month Notice to End the Tenancy for Cause to take effect in this case, the Agent said:

We're just concerned that unfortunately there is a pattern of these break-ins, it's not an isolated incident. We don't know how the fob was copied in the first place. The Tenant hasn't been forthcoming about the copy. Maybe that didn't happen, and she has been letting people in.

The Tenant said:

I wanted to say that the video evidence that was submitted by the Landlord – there's no footage of me with this man. I have no communication with a 40 - 50-year-old white male, as described. I wanted to point out that throughout my six years of living here, I have never been in the bike storage where this man was seen. I am willing to have those records pulled out. I have nothing to do with this person. The RCMP will find out what's going on. I am accused of something I have nothing to do with.

As for how I copied the fob, I googled it and went to Chinatown and there was a store. The last time I checked the fob was \$100.00 from [the Landlord] and it was \$20.00 from this place.

The Agent said that they de-activated the fob associated with the break-ins and that it was the Tenant's fob. The Agent said: "We received a call from [the Tenant] saying that her fob no longer worked. We issued a new fob which was dropped off to her and we collected the old fob."

The Landlord went on:

[The Tenant] did not act in a way that is a responsible tenant. I don't know if there's enough evidence to say she is responsible. . . when we deactivated the fob, she promptly let us know. We cannot allow the incidents to go on any longer.

The Tenant said:

I'd like to highlight that it seemed very urgent that the fob be deactivated. After looking through the security log that they submitted, I wanted to note that these incidents have been happening since March, and I was only told in October. If I had known that I had lost the key - I have lost it before - if I had known that I lost the key, I would have reported it. Anyone can lose a key without knowing it. That I am responsible for all those break-ins for seven months is a bit ridiculous.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

In order to establish grounds to end a tenancy early under section 56 of the Act, the landlord must not only establish that they have cause to end the tenancy, but that it would be unreasonable or unfair to require the landlord to wait for a notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the submissions and testimony of the Agent, I find that the Landlord has not met that burden.

I find it reasonable to conclude from the codes that the male suspect in the break-ins had used the Tenant's key fob. However, I find that there is insufficient evidence before me that the Tenant gave the fob to the suspect, and is benefitting from the break-ins in some way. As the Parties noted, the Tenant has lived in the building for six years. I find it unlikely that a person would choose to break into the building in which they live, using their own entry fob.

Based on the evidence before me overall, I find that the Landlord has provided

insufficient evidence to support their claim. I, therefore, dismiss the Landlord's Application wholly without leave to reapply, pursuant to section 62 of the Act.

Conclusion

The Landlord's Application is unsuccessful. The Landlord did not provide sufficient evidence to meet their burden of proof in this matter. The Application is dismissed wholly without leave to reapply.

I Order that the tenancy shall continue until ended in accordance with the Act.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 13, 2020

Residential Tenancy Branch