



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on April 01, 2021 (the “Application”). The Landlord applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the “Act”). The Landlord also sought reimbursement for the filing fee.

Legal Counsel for the Landlord appeared at the hearing. Legal Counsel called four witnesses during the hearing. The Tenants did not appear at the hearing. I explained the hearing process to Legal Counsel and S.M. who did not have questions when asked. I told Legal Counsel and S.M. that they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The witnesses provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

S.M. testified that two packages, one for each Tenant, containing the hearing package and evidence were served on Tenant S.K. in person at the rental unit on April 06, 2021.

Based on the undisputed testimony of S.M., I find the Tenants were served with the hearing package and evidence in accordance with sections 88(a), 88(e), 89(2)(a) and 89(2)(c) of the *Act*. I also find the Tenants received the hearing package and evidence April 06, 2021. I find the Landlord complied with rule 10.3 of the Rules in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. Legal Counsel and the witnesses were given an opportunity to present

relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and all oral testimony and submissions of Legal Counsel and the witnesses. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The landlord named on the tenancy agreement is not the Landlord. S.M. advised that the Landlord and the landlord named on the tenancy agreement are co-owners of the rental unit and that the Landlord acts for the landlord named on the tenancy agreement. The tenancy started October 15, 2019 and is a month-to-month tenancy. The Tenants paid a \$600.00 security deposit.

Legal Counsel, on behalf of the Landlord, sought to keep \$100.00 of the security deposit towards the filing fee.

The Application outlines the following issues in relation to the Tenants:

- The Tenants allowing a constant flow of “addicts” into the building
- People throwing rocks up at windows to gain access to the building
- People scaling the wall to the balcony of the rental unit
- The Tenants pouring bleach down onto a patio below where another occupant was sitting with her small dog
- People or the Tenants leaving needles and drug paraphernalia around the complex
- A male attempting to force entry to a next door unit threatening to kill the occupants
- Someone yelling death threats at the Tenants
- RCMP attending regularly
- Door to the unit kicked in

S.M. testified as follows. He has discussed Tenant D.P. with the RCMP as Tenant D.P. is always on their radar. The RCMP have attended the building on countless occasions for the issues outlined in the Application. Tenant D.P. was recently arrested for brandishing a handgun in the unit and a handgun was found in the unit. Tenant D.P. was arrested at the unit and is currently in jail awaiting a trial. Drug dealers are attending the unit and threatening the Tenants. People associated to the Tenants have banged on another tenant's door screaming that they are going to kill the occupants without realizing they were at the wrong door. Tenant S.K. admits that the issues raised are occurring but cannot control the issues.

V.G. testified as follows. She is an owner of a unit in the building and president of the strata. There have been issues with the Tenants disturbing other tenants as well as concerns about safety and criminal activity. There is police activity at the building due to the Tenants. The strata has received letters about the Tenants' guests kicking doors and causing damage. RCMP attend the building and unit due to violence. On March 03, 2021, RCMP attended due to drug activity in the unit and observations of it occurring in the common hallway. On March 11, 2021, RCMP attended due to a domestic dispute in the unit which was disturbing others. Guests of the Tenants have climbed up the side of the building to get to their patio. The Tenants have propped open doors to allow guests into the building and these guests are attending for drug related activity. A neighbour reported hearing a fight in the hallway during which guns and knives were referenced which resulted in the neighbour and V.G. calling the police. There is drug activity occurring in the halls due to the Tenants. The Tenants' neighbours do not feel safe. Strata receives one to three complaints of a serious nature per week about the Tenants. She is concerned for the safety of other tenants.

D.P. testified as follows. He is a tenant in another building on the residential property and assists the caretaker. They get numerous messages about the Tenants being disruptive. People associated to the Tenants are throwing rocks at windows to get the Tenants' attention. There have been numerous police calls about the Tenants. Other tenants are afraid of the Tenants. There is yelling, screaming and excessive banging coming from the unit. The Tenants fight and are abusive which has been confirmed by police. The door to the rental unit has been kicked in such that it needs to be replaced. They have observed drug dealers and drug purchasers at the building in relation to the Tenants. Recently, the neighbour below the Tenants heard Tenant D.P. saying he had a gun and called police. He let police into the building. A few days later, police confirmed with him that Tenant D.P. was removed from the unit and that there was a handgun involved.

P.P. testified as follows. She lives below the Tenants. She hears the Tenants fight a lot and it is very volatile with screaming, crying and crashing. She has called the police in relation to the Tenants a lot. Recently, she heard the Tenants fighting. She heard Tenant S.K. screaming about Tenant D.P. holding a gun to Tenant S.K.'s head. She called the police and police attended. She had to provide a statement to police. Police told her that Tenant D.P. was holding a gun to Tenant S.K.'s head. The Tenants use drugs and let drug users into the building. People associated to the Tenants yell and throw rocks at the Tenants' patio.

The Landlord submitted an email from J.Y. stating as follows. J.Y. was woken up at 4:30 a.m. by someone shouting and banging on the Tenants' door. The person was shouting at Tenant D.P. to come out into the hallway "to fight him like a man, and to leave the knives and guns so they can fight properly." J.Y. found this scary and disturbing to hear. Police attended. The person came back two more times shouting at the Tenants. This is not the first time there have been loud fights, shouting and police attendance. The Tenants fight in the hallway. People call for the Tenants outside their deck at all hours. People throw things at the Tenants' window to get their attention. Previously, a man was angry, insistent, shouting and pounding at J.Y.'s door demanding to be let in before realizing he was at the wrong unit and was looking for the Tenants. J.Y.'s partner accidentally left his keys in their door and a guest of the Tenants' stole them. The person knocked on the door when J.Y. was by themselves to see if anyone was home and when J.Y. answered he said he was at the wrong unit; however, J.Y. recognized him as one of the people who often shouts at the Tenants' unit from outside. J.Y. had to barricade their unit until they could get it rekeyed the next day.

Legal Counsel sought an Order of Possession effective two days after service on the Tenants.

Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when two conditions are met. First, the tenant, or a person allowed on the property by the tenant, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

2. Seriously jeopardized the health or safety or a 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 has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules, the Landlord, as applicant, has the onus to prove the circumstances meet this two-part test. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I accept the testimony of the witnesses as well as the email from J.Y. and accept that the Tenants and their guests have acted in the manner described. I accept the testimony of the witnesses as well as the email from J.Y. as these are undisputed.

I am satisfied that the behaviour of the Tenants and their guests described by the witnesses and J.Y. amounts to the Tenants and their guests doing the following:

- Significantly interfering with and unreasonably disturbing other occupants or the landlord of the residential property;
- Seriously jeopardizing the health or safety or a lawful right or interest of the landlord or other occupants; and
- Engaging in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of other occupants of the residential property.

I am satisfied it would be unfair and unreasonable to require the Landlord to wait for a One Month Notice to End Tenancy for Cause to take effect given the behaviour of the

Tenants and guests involves violence, drug activity, handguns, excessive disturbances, safety concerns as well as numerous police complaints and attendance.

I am satisfied the Landlord has met their onus to prove the tenancy should end pursuant to section 56 of the *Act*. I issue the Landlord an Order of Possession for the rental unit which will be effective two days after service on the Tenants.

Given the Landlord was successful, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. The Landlord can keep \$100.00 of the security deposit as reimbursement for the filing fee pursuant to section 72(2) of the *Act*.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to reimbursement for the \$100.00 filing fee. The Landlord can keep \$100.00 of the security deposit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 23, 2021

Residential Tenancy Branch