



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 tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:30 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. The landlord, his brother (who acted as translator), his lawyer ("**DM**") and agent ("**SM**") attended the hearing. Additionally, the landlord called four witnesses to give testimony: three neighbours ("**SS**", "**NS**" and "**GS**"), and an assistant of SM ("**MM**"). 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, his brother, his lawyer, his agent and I were the only ones who had called into this teleconference for its duration. The witnesses only attended the portion of the hearing at which they gave their oral testimony.

The SM testified, and MM confirmed, that he served that the tenant personally with the notice of dispute resolution form and evidence on April 2, 2020. I find that the tenant was served in accordance with sections 88 and 89 of the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) end the tenancy early and to an order of possession; and
- 2) recover the 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.

Due to a language barrier, I permitted the landlord's lawyer to state his understanding of the facts of this case, based on prior discussions with the landlord and the landlord's brother. Once he concluded his submissions, the landlord and the landlord's brother each affirmed that DM's statements were true to their best of their knowledge and were what they would have testified to had they each given testimony directly.

The parties entered into an oral tenancy agreement starting February 1, 2021. Monthly rent is \$1,300 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$650, which the landlord retains in trust for the tenant. The rental unit is located on the lower level of a single detached home. The landlord and his family reside in the upper unit.

DM stated that the tenancy agreement had a term prohibiting smoking of cannabis or tobacco on the residential property as well as a term prohibiting the tenants from keeping pets on the property. Additionally, the tenancy agreement did not include internet.

DM stated that in addition to the tenant, her husband and father-in-law, reside in the rental unit. Her husband moved in in mid-February 2021. Once her husband moved in, DM states that on an almost nightly basis loud noises, including smashing, music, and fighting sounds could be heard in the upper unit coming from the rental unit.

The tenant would play loud music well into the early hours of the morning. The landlord at first ask the tenant to refrain from such conduct, to no avail. He testified that these disturbances prevented the landlord and his family from getting enough sleep and caused his children to be frightened. In an effort to stop such disturbances, and as a last resort, the landlord turned off the Wi-Fi (which he had gratuitously and not pursuant to the tenancy agreement provided to the tenant) at 11:00 PM.

When the landlord did this, the tenant's husband confronted him, yelled at him, hurled racial slurs at him, and acted in a physically aggressive and intimidating manner towards him. The landlord called the police.

DM stated that the circuit breaker box for the entire residential property is located in the rental unit. After cutting off the Wi-Fi, the power to the upper floor was cut off. The landlord suspects that this was done by the tenant in retaliation.

Over the next month or so, the landlord called the police seven times due to excessively loud noise and sounds of parties coming from the rental unit late in the evening and in the early morning. The landlord called three neighbours as witnesses, all of whom testified that the tenant's husband caused disturbances in the neighbourhood on more than one occasion.

SS and NS testified that the tenant's husband kicked and pounded on their respective doors for multiple minutes around midnight of February 27, 2021, which scared each of their families. They testified he was yelling and swearing. They thought he might have been intoxicated. They called the police.

NS testified that, on another evening, the tenant approached his vehicle and pounded on the window. NS called the police.

GS testified that he and his family see large, loud gatherings at the rental unit on Friday, Saturday, and sometimes Sunday evenings. He testified that these parties could be heard inside his house. GS testified that his wife is afraid to leave the house at 4:00 am to go to work because of the tenant's husband's conduct.

The landlord testified (in his own right, not merely affirming what DM stated) that the RCMP has given him "strict instructions" not to interact with the tenant's husband unless an RCMP officer is present on the property. He testified that his wife feels like a prisoner in their home and that he has had to come home from work on more than on occasion to deal with the tenant's husband's erratic behaviour.

The landlord submitted four video files into evidence which show:

- 1) the tenant's husband yelling and aggressively gesturing at the landlord, who is filming from an upper floor window;
- 2) the tenant's husband approaching a vehicle parked in the house's driveway and knocking on the window in an aggressive fashion. The driver does not open the window. The tenant's husband then walks away from the vehicle into the street and starts pacing in circles;
- 3) the tenant's husband knocking on the landlord's door, and, when it is unanswered, ripping a cable off the wall of the house;

- 4) the landlord's husband being removed from the rental unit in handcuffs by the police.

DM stated that the tenant, her father-in-law, and her husband smoked tobacco and/or marijuana in the rental unit and on the rental property. The landlord put no smoking signs up in the carport (which the tenant had to pass through to gain access to the rental unit), but the occupants of the rental unit ignored the signs and tore them down.

Analysis

Section 56(2) sets out the basis on which a tenancy may be ended early. It states:

- (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.

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.

So, the landlord must prove it is more likely than not that the tenant or someone she permitted on the residential property acted in such a way as to satisfy one of the conditions set out in section 56(2)(a) and that it would be unreasonable or unfair to end the tenancy pursuant to section 47.

RTB Policy Guideline 51 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

I accept the statements of DM, as affirmed by the landlord and his brother, to be true in their entirety. Additionally, I accept the undisputed testimony of the three neighbours called as witnesses by the landlord in their entirety. Each neighbor's evidence was consistent with each other's, and all were consistent with the DM's statements. Additionally, I find that the four videos submitted into evidence, while not depicting all of the conduct described by DM and the neighbours, depicts conduct of the tenant's husband that is consistent with the types of conduct alleged. I find that the evidence provided by the landlord meets the high standard set out in Policy Guideline 51.

I find that the tenant's husband is a person whom the tenant permitted onto the residential property.

I find that by regularly hosting loud parties that could be heard inside neighboring houses and by acting in an aggressive and threatening manner towards to the landlord, that the tenant's husband has unreasonably disturbed the landlord and his family. As such, I find the requirement of section 56(2)(a) is met.

In light of the fact that the police have attended the rental on seven separate occasion in a tenancy that is three months old, and due to the severity and frequency of the disturbances, I find it would be significantly unfair to the landlord to require him to end the tenancy pursuant to section 47 of the Act. Accordingly, the requirement of section 56(2)(b) is met.

Accordingly, I grant the landlord an order of possession effective two days after the landlord serves it on the tenant.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he/she/they may recover their filing fee from the tenant. Pursuant to section 72(2) of the Act, the landlord may retain \$100 of the security deposit in satisfaction of tis amount.

Conclusion

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 order(s) 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: April 30, 2021

Residential Tenancy Branch