



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

The landlord seeks an order ending a tenancy pursuant to section 56 of the *Residential Tenancy Act* ("Act"). In addition, the landlord seeks to recover the cost of the filing fee under section 72 of the Act.

Both parties attended the hearing on May 10, 2021. No issues of service were raised by the parties, and Rules 6.10 and 6.11 of the *Rules of Procedure* were addressed.

Issues

1. Is the landlord entitled to an order to end the tenancy under section 56 of the Act?
2. Is the landlord entitled to recover the cost of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began January 1, 2021. Monthly rent is \$1,350.00 and the tenant paid a security deposit of \$675.00. A copy of the written tenancy agreement was in evidence.

The landlord testified that he seeks an end to the tenancy because of the tenant's lifestyle, which involves frequent partying late into the night and early morning, yelling and arguments outside the property in the early hours, and, lots of loud music being played at all hours. The occupants who reside in two other rental units above the tenant have complained to the landlord about being disturbed by the tenant's lifestyle and behavior.

It is “a quiet house,” the landlord explained. He added that there is virtually no insulation between the tenant’s rental unit and the rental unit located above the tenant. When he was first showing the tenant the rental unit, they both heard the upstairs tenant walking around. He asked, or sought assurance from, the tenant that this noise would not be an issue for the tenant.

The landlord issued a warning to the tenant in mid-March 2021 regarding these issues. And, while the tenant’s behavior apparently changed a little bit, by Easter weekend the nighttime parties had resumed.

The landlord has offered generous financial incentives for the tenant to agree to vacate; the tenant has not taken the landlord up on these offers.

On April 13, 2021, the landlord served a One Month Notice to End Tenancy for Cause on the tenant, which the tenant explained he has disputed. (The tenant provided me with the file number on that dispute, and the Residential Tenancy Branch’s Dispute Management System indicates that there is a hearing scheduled for August 6, 2021 at 11:00 AM. The tenant was required to serve a copy of the Notice of Dispute Resolution Proceeding regarding that dispute on the landlord by May 8, 2021. The file number for that dispute is noted on the cover page of this decision.)

Submitted into evidence by the landlord were a few letters from other occupants and neighbours. The landlord, who does not reside at or in the residential property, did not call any witnesses to testify at the hearing.

The tenant testified that he is “trying to keep things quiet as much as I can.” He explained that he is unable to accurately determine the volume of noise because of an infection in one of his ears. A copy of a doctor’s note regarding the ear infection was in evidence.

In his final submission, the landlord testified that the tenant has always been respectful and calm in interacting with him, but, nevertheless, all he gets are “apologies and excuses.” There has been very little change in the tenant’s behavior and no action to change. In short, the tenant’s lifestyle is simply not compatible with the quiet house in which other tenants reside.

The landlord is, I note, a very experienced landlord who has rented for over 25 years. However, to his regret, this is the first that he finds himself in this position. He has done his best, but the tenant’s behavior continues.

Analysis

Section 56 (1) of the Act permits a landlord to make an application for dispute resolution to request an order (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit.

In order for me to grant an order under section 56 (1), I must be satisfied that

- (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.

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 this dispute, the landlord seeks to end the tenancy because the other tenants (including a neighbour who does not reside in the property) are purportedly adversely affected by the tenant's loud, nocturnal lifestyle. The tenant disputes this and says that he is trying his best to keep the noise down. His ear infection apparently makes it harder for him to judge noise levels (though, there is no evidence that his non-infected ear cannot accurately detect volume).

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has failed to provide any evidence that the tenant's behavior has caused the other tenants to be adversely affected or otherwise disturbed. In the absence of any witnesses, or, in the absence of the other occupants of the property to affirm and corroborate the content of their correspondence, I place little weight on those letters. The entirety of the landlord's submissions is based on hearsay evidence, for which I place little weight. Submissions must be supported by evidence that can be corroborated.

Should the landlord wish to end a tenancy under the Act, they must be prepared to call witnesses – in this case, the occupants who were actually disturbed by the tenant's conduct – to the hearing to support an application to end the tenancy. To this end, what is of particular note is the fact that there is no, or almost no, insulation and soundproofing within the residential property. The fact that the landlord and tenant heard the upstairs tenant walking around at the start of the tenancy, and the fact that the landlord checked with the tenant that this would not be an issue, raises in my mind the strong likelihood that noise travels far more than it would had there been some sort of insulation.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving their claim that the tenancy ought to end under section 56 of the Act. In short, there is no supporting evidence – and by that, I mean oral testimony from the other occupants of the residential property, or, oral confirmation by the authors of the complaint letters – to lead me to find that the tenancy must end.

It is not lost on me that the other occupants appear to have been disturbed. However, I will not consider ending a tenancy without hearing from the persons who are actually affected by the tenant's behavior. Letters submitted are insufficient, and even more so when a tenant disputes the issues alleged in the letters. Accordingly, I dismiss the landlord's application for an order ending the tenancy.

The tenancy shall continue until it is ended in accordance with the Act.

Conclusion

I dismiss the landlord's application.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: May 10, 2021

Residential Tenancy Branch