



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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord's agent, J.B. (the landlord) attended the hearing via conference call and provided affirmed testimony. The tenant, T.C. (the tenants) attended the hearing via conference call and provide affirmed testimony on behalf of the named tenant, J.R.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited. Both parties were also advised that pursuant to Rule 7.4 Evidence must be presented, where evidence must be presented by the party who submitted it or by the party's agent. Evidence not presented may or may not be considered.

Issue(s) to be Decided

Is the landlord entitled to an early end to the tenancy and to obtain an order of possession?

Is the landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on October 1, 2020 on a fixed term tenancy ending on September 30, 2021 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated September 15, 2020. The monthly rent is \$1,850.00 payable on the 1st day of each month. A security deposit of \$925.00 was paid.

The landlord seeks an early end to the tenancy and to obtain an order of possession as the tenants pose an immediate and severe risk to the rental property, other occupants or the landlord. The landlord provided written details which states:

The tenants in the LL have had violent fights and police have attended the property. The UL tenants are fearful for their safety of the children who live in the LL. UL tenants work and attend online classes from home. The violent fights are severely impacting their performance in work and school and their mental and physical health. LL Tenants didn't pay April rent. They have said they will dispute a 10 Day Notice to drag out RTB Process putting the UL tenants at greater risk.

[reproduced as written]

The landlord clarified that the upper rental unit is occupied by 3 females who have witnessed "yelling and swearing" from the tenants' rental unit. The landlord stated that the upper tenants fear for their safety from the tenant, T.C. The landlord stated that the upper tenants suffer "mental anguish" due to the loud noise of "yelling and swearing" coming from the tenants' rental unit and as a result their mental health is in jeopardy. The landlord stated that the loud excessive noise occurs on a weekly basis, sometimes more often and is pervasive and ongoing. The landlord was unable to provide any further details on the loud noise incidents or their frequency. The landlord has also stated that the tenants have threatened to withhold rent and file an application for dispute of any notice served upon them to end the tenancy.

The landlord has referred to video file "AB754E48-7078-488B-A780-1A561BF1B187". A review of this video reveals primarily an 1:20 audio recording of what sounds like an argument between two males yelling and swearing and moving from inside to outside the rental property. The landlord also referred to a second video file named "Fight_that_occured_April_22". A review of this video file which again appears to be primarily an audio recording of 39 seconds which demonstrates again loud yelling and swearing and a baby crying.

The landlord has referred to submitted copies of email copies from the upper tenants as evidence in support of the claim that the tenants have cause to fear for their safety.

The first email evidence file "Email_from_Upper_Tenants_1" for the email dated May 8, states in part,

...As you can hear, there was clearly a domestic altercation going on. The 3 children were present (the 5 year old is visible at the end of the video) as the boyfriend screamed obscenities at the top of his lungs. This yelling continued for 20 minutes and was very distressing for my roommates. We are calling Ministry of Children and Families and if this happens again, we are calling police immediately. This was very scary for us for us to have to deal with in the middle of our work day...

The landlord referred to the evidence file "Email_from_Upper_Tenants_2" for the email dated March 17, 2021 which states in part,

Yes, as young women, we would appreciate it if we were not directly involved, as we would not want any threat to our safety if the tenants were angry about the eviction.

The landlord referred to the evidence file "Email_from_Upper_Tenants_3" for the email dated February 6, 2021 which states in part,

*... We'd like to bring to your attention some of the concerns we have regarding the downstairs tenants. When we first moved in to the property, the tenants approached us letting us know they'd be moving shortly. We believe the downstairs property was viewed multiple times, so we expected the tenants to be gone by the end of summer. Because we thought they would be leaving soon, we were very patient and complacent with the concerns we had, namely noise. Not only is the noise excessive, it is deeply distressing. There are two young children (JJ + Caleb) downstairs and the mother (Julia) is expecting a third. Often the children are left to cry for long periods of time, clearly upset, but ignored. We often hear mum screaming at them, telling them to shut up, follow unreasonable orders, stop making messes, and get out of her room. My roommates and I all work with children and it is incredibly hard for us to hear what we believe to be traumatic parenting going on downstairs. We encountered a social worker in the summer so can assume the family is connected to some supports, but this dynamic is affecting **our wellness and mental health**. We believe there to be at least four adults and two children living downstairs, and the property receives **frequent visitors and overnight guests (adults and children)**. The mom's boyfriend moved in in the fall which has been particularly hard.*

He seems to take good care of the kids, but yells often at his video games, fights with the other adults, and can cause situations to become escalated quickly. We have attached screenshots confirming this man's presence in the suite and that the situation is difficult...

The landlord referred to the evidence file “Email_from_Upper_Tenants_4” for the email dated February 8, 2021 which states in part,

Thank you so much for getting in contact with me today! I appreciate you taking steps to address our concerns. I spoke with my roommates and we would like the property to be inspected and a letter or a call issued to the downstairs tenants citing excessive, constant, and distressing noise. There needn't be too much detail (I wouldn't want to embarrass them), but that the nature of the noise (i.e. the yelling...) is distracting and impedes me and my roommates' ability to sleep, work and study from home, and maintain a peace of mind — which is especially important these days!

The tenants argued that he (T.C.) has been in a difficult position moving in with his girlfriend. The tenants stated he was originally only supposed to be moving in with his girlfriend and her children to end up having his girlfriend's brother and parents living with them. The tenants stated that this caused issues which were primarily with the brother. The tenants stated that as of the date of this hearing the brother is no longer residing at the rental unit and the parents still occupy the rental unit to assist with taking care of the children. The tenants provided undisputed affirmed evidence that there is no insulation between the floors and that noise travels easily between the two rental units. The tenants argued that T.C. has never argued with the upper level tenants nor has he ever raised his voice to them. The tenants stated that at no time has the tenant, T.C. ever threatened the upper tenants. The tenants further stated that there are many issues with the rental unit in which the tenants have notified the landlord to take action. The tenants stated that he has threatened to withhold rent if no repairs are made.

Analysis

In accordance with section 56 of the Act, in receipt of a landlord's application to end a tenancy early and obtain an order of possession, an arbitrator may grant the application where the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health and safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property in significant risk;
- engaged in illegal activity that:
 - has caused or is likely to cause damage to the landlord's property;

- 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
- has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property.

In addition to showing at least one of the above-noted causes, the landlord must also show why it would be unreasonable or unfair to the landlord to wait for a 1 Month Notice to take effect.

A one month notice to end tenancy for cause is the standard method of ending a tenancy for cause. An order to end tenancy early pursuant to section 56 requires that there be particular circumstances that lend urgency to the cause for ending the tenancy. That is the reason for the requirement that the landlord show it would be “unreasonable or unfair” to wait for a cause notice to take effect.

In this case, the landlord has claimed that the tenants have caused the upper tenants to fear for their safety. A review of the two videos (audio recordings) and the 4 email submissions presented by the landlord fail to provide sufficient evidence of the upper tenants fear for their safety. While the landlord has claimed that the tenants are suffering “mental anguish” and that their mental health is in jeopardy, the landlord was unable to provide sufficient supporting evidence of this claim. A common thread amongst the two videos and emails is that the tenants have caused excessive noise on at least 2 occasions where their yelling and swearing has unreasonably disturbed the upper tenants. The tenants provided undisputed affirmed evidence that there is no insulation between the two rental units and that sound travels easily between the two. On this basis, I find that the landlord has failed to provide sufficient evidence that the tenants have caused the upper level tenants to fear for their safety. The landlord’s application is dismissed.

The tenants are also cautioned that this application filed by the landlord is clear notice that their tenancy is jeopardy for unreasonably disturbing the upper level tenants due to their yelling and swearing. Despite the lack of insulation between rental units, the tenants have a duty of conducting themselves knowing that there is an easy path for noise to travel between the rental units.

The tenants were also cautioned regarding the tenants’ threat of withholding rent.

Section 26 of the Act states in part,

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

Conclusion

The landlord's application for an early end to the tenancy is dismissed 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: May 14, 2021

Residential Tenancy Branch