



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 concerning an application made by the landlords seeking an Order of Possession ending the tenancy earlier than a notice to end the tenancy would take effect, and to recover the filing fee from the tenant for the cost of the application.

The hearing was originally scheduled for June 15, 2021 and was adjourned to June 23, 2021 at the request of the tenant. My Interim Decision was provided to the parties.

Both landlords and the tenant attended the June 23, 2021 hearing, and one of the landlords and the tenant each gave affirmed testimony. The tenant also called 4 witnesses, who each gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses and to give submissions.

During the course of the hearing the landlord raised an issue with respect to witnesses called by the tenant and indicated that the Residential Tenancy Branch advised that calling witnesses would not be permitted without following the Rules of Procedure, which states, in part:

7.19 Witnesses' attendance at the dispute resolution hearing Parties are responsible for having their witnesses available for the dispute resolution hearing. A witness must be available until they are excused by the arbitrator or until the dispute resolution hearing ends.

7.20 Exclusion of witnesses and others The arbitrator may exclude witnesses from the dispute resolution hearing until called to give evidence. The arbitrator may, when they consider it appropriate to do so, exclude any other person from the dispute resolution hearing.

Considering the nature of the landlords' application, I did not find it appropriate to exclude any of the tenant's witnesses. However, the landlords have provided written statements from witnesses rather than having them attend the hearing, and I find it just in the circumstances to consider those statements as testimony from the writers.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the landlords established that an Order of Possession should be issued ending the tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under Section 47 of the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began on January 1, 2013 and the tenant still resides in the rental unit. Rent in the amount of \$390.00 is payable on the last day of each month, in advance for the following month, and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$187.50 which is still held in trust by the landlords, and no pet damage deposit was collected. There is no written tenancy agreement. The rental unit is a room in a rooming house for men.

The landlord has a degree in social work, and the building itself is unique. It's a safe place, and the landlords endeavour to link tenants to services in the community.

The landlord further testified that the tenant was served with a One Month Notice to End Tenancy for Cause (the Notice) dated April 23, 2021 and containing an effective date of vacancy of May 31, 2021, along with a letter and attachments, which have been provided for this hearing. A copy of the Notice has not been provided, but a Caution Notice to Tenant has been provided showing the reasons for possible issuance of a Notice, which states:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
 - jeopardize a lawful right or interest of another occupant or the landlord.

The landlords believed that they could wait the 6 weeks for the Notice to take effect however the tenant disputed the Notice, and a hearing is scheduled for September 9, 2021. Since the hearing date was about 5 months away, the landlords applied for an earlier end of the tenancy to avoid the wait; and that due to violence related issues, the landlords believed the longer wait was unmanageable.

The tenant plays video games late at night, and says he uses headphones, however tenants can hear it as well as loud music at 2:00 or 3:00 a.m. On May 18, 2021 the landlord received an email at 1:00 a.m. from another tenant saying that the tenant was yelling and screaming in the house and parking lot, banging on walls and doors upset that someone stole a hamburger from the barbeque. Historically, other complaints have been received of parties, throwing darts at a dart board in the middle of the night and generally noisy, or doing yard work at 10:00 p.m.

With respect to the health and safety of all occupants, the landlord testified that people have been coming into the rental complex off the street and the tenant has been identified as the person letting them in, using facilities, and those people should not be there. Women have been coming in using the bathroom and staying for a long time and not leaving. Other tenants have told the landlord that when they come out of the bathroom, the women are high on drugs and that paraphernalia is left in the bathroom. The landlord has been on the phone talking with other tenants and heard them trying to get people out of the bathroom.

When the landlords purchased the rental building 15 or 16 years ago there was a “No Women” rule, and that rule has been assumed. The landlords or agents have found needles, blood, feminine products in the bathroom, halls and outside.

Further, all tenants come from different life stories, such as PTSD, and when the tenant yells and screams and gets in people’s faces, it triggers issues, and when the tenant gets aggressive, other occupants say that it is very upsetting. The tenants live like a community in the house, and it’s like living with a violent partner. The tenant decides he is the enforcer, but he lets people in, and is noted on cameras as well as numerous tenants telling the landlord about it.

In March 2020, an elderly man who has addiction problems called the landlord while sober and he was upset. He had been attacked in his room by the tenant, was pushed, choked and punched and the landlord told him to call police. The landlord is not certain if he did so.

On April 12, 2020 the house manager told the landlord that he gave 3 written warnings to the tenant for having women in the house.

In November, 2020 the landlord received a call from another occupant/tenant stating that he moved out with police assistance because the tenant and 2 others were threatening to harm him, and that the tenant is the source of problems in the rental home. He also told the landlord that the tenant can see drug dealers approaching or they knock on a window and the tenant lets them in. When one occupant/tenant first moved in, the tenant was egging him on to go after another tenant, deciding he was a rat and wanted the newer occupant/tenant to bully the rat. The landlord contacted RCMP who said that he would attend if the landlord felt threatened, and the landlord does not feel safe with the tenant.

The next day, the landlord held a House Meeting. When the landlord puts things in writing, things calm down, but not lately. The tenant said that the landlord was powerless and couldn't do anything to stop him. Others feel powerless.

Long-term renters are leaving and some have identified the tenant as the reason. The tenant is drinking lots and doing hard drugs, causing erratic and unpredictable behaviour and stays awake for days on end. His statements that the landlord is stalking him is paranoia, and he has flash rages, so the landlord is careful.

The witness statements provided by the landlord include the following:

Witness 1

- tenant told the witness he would beat up anyone whether deserved or not;
- witness saw the tenant break a bottle and threaten another person with it;
- tenant plays loud music after 11:00 p.m. even after being asked to turn it down;
- tenant has people in and out all night long and keeps the doors open all night;
- tenant uses meth and drinks excessively;
- tenant has been eavesdropping;
- tenant cannot be trusted.

Witness 2

- tenant has had several violent fights over the years;
- tenant enters others' rooms and lied to the caretaker about it.

Witness 3

- tenant stole the witness' gloves;
- tenant has been seen chasing people with machetes and extra big wrenches, threatening them with violence numerous times, loudly expressing his anger;
- tenant always seems to be centered around problems in the house;
- tenant plays loud music at late hours;
- tenant yells up and down hallways, which often triggers the witness' PTSD;
- tenant is quick to use violence in a confrontation.

Witness 4

- tenant has had 3 warnings about noise complaints and having women stay over in his room;
- witness has seen and heard a couple of verbal disturbances with a couple of different men in the house, but has not seen any physical violence;
- tenant plays music loud after 11:00.

The landlord has also provided a lengthy text message which appears to be dated April 19, 2021 to the landlord from the house manager. It states, in part, that numerous complaints have been received over the past couple of months, about the tenant sneaking women into his room, heated arguments with other tenants including verbal threats, threats of physical violence causing people to be afraid for their safety, allowing people into the building during early morning hours, and playing loud music at 2 and 3 in the morning,

A letter dated May 18, 21 has also been provided which is signed by 4 other tenants indicating similar and erratic, unpredictable violent behaviour, as well as assault and looking to fight. It also states that managing COVID safe practices is nearly impossible due to the tenant's behaviour.

The tenant testified that he is not an enforcer, but people go running to him, and he helps. The tenant was told that the house helps people deal with their stresses, and all of the tenants have problems. One calls police on himself.

The tenant took an 8 month course to teach people how to use drugs safely, and sexual things, such as condoms. The group that the tenant is involved with has a booth at raves as well to ensure people have the tools they need to be safe.

The elderly fellow that the landlord spoke about has cancer and has been receiving late appointments for chemotherapy due to COVID-19. The elderly tenant was intoxicated and came out screaming, yelling and hit the tenant 3 times. The manager arrived and the elderly fellow was flipping out. The tenant testified that he went to his room, police arrived, and didn't believe anything the elderly tenant said.

The tenant only banged on walls once to get the attention of the manager because someone was overdosing. Paramedics and a lot of other people showed up to deal with the person.

The landlord's testimony that other tenants are leaving because of the tenant is totally untrue. One left because he has dialysis 3 times per week, and the tenant pays him for use of his internet. Another who moved out is an elder and now lives in a place for older folks, and the tenant still does his taxes. The landlord has lied about why men have moved out; the tenant still deals with them day to day and has worked hard to build up a community of folks that he cares about. Further, the tenant asked the manager about the text message provided by the landlord in her evidence, and he said he didn't know about it.

The landlord's evidence also contains a statement of 4 tenants dated April 21, 2021. One of them told the tenant that the landlord gave them the letter, which was prepared in advance, poured on crocodile tears and manipulated people. The person said he had to leave because he was disgusted about the landlord's method.

Last November when the landlord met with police, she told the tenant that she had a back-ground check done, and the tenant told her that was illegal. Only police are supposed to see the information. It doesn't show convictions or results, just accusations and she got scared.

The tenant further testified that since the landlord had a meeting with officers, she moved cameras to point to the tenant's room on November 30, 2020. The tenant told her it was invasive. The tenant agrees with cameras, but not to intimidate or harass him.

Last summer the tenant got a new telescope and almost every night puts on a florescent jacket and has told other tenants about it. There were lots of comets and meteor storms last year, which is an interest of the tenant, and he tries to get people into hobbies. The landlord saw the tenant doing it and accused the tenant of doing drugs. The landlord's warning letter talks about drug dealing and told the tenant that police say the tenant is known for that. The images in the landlord's camera go to a "cloud" and informs the landlord of motion and she records it. She would be awoken by

her Smart Watch, then go to the rental home the next day complaining that she doesn't want to be bothered all night. It's not appropriate to use cameras to ensure the tenant is loyal to the contract or lease; the tenant was going out with his telescope.

The tenant only has guests that live in the home. With respect to women, a neighbour told people to knock on his window, but they knocked on the tenant's window around the corner. The neighbour is the manager, and left a guest in the tenant's room and she passed out. The manager said he found a girl in the tenant's room, but she was his guest. He'd leave them and leave loud music on, and the tenant only tried to drown out his music with his own.

The tenant and others tried to get a girl out and she was screaming. She went down the front stairs, and was being arrested for something else already, but it seems some can have women over and some can't. The tenant also had to testify for an incident where a woman stabbed another tenant in the hand, and she still goes to the rental home.

The tenant admits that he has done drugs, but not as much as the landlord has let on. When the tenant drinks, he likes to drink alone.

The tenant's first witness (WF) testified that the tenant helps him, and he has not personally witnessed any violence.

The tenant's second witness (DD) testified that he was the building manager and resided in the rental house for 12 years, also during the time that the tenant lived there. The witness has not seen any violent behaviour, but the tenant would tell people to stay out or get away. There were no threats, no complaints about the tenant when the witness lived there, and the tenant never bothered the witness.

The tenant's third witness (JC) testified that he has never witnessed the tenant being mean or threatening people, and is very helpful.

The tenant's fourth witness (TV) testified that he moved into the rental house in mid-October, 2020. The witness has been made aware of accusations against the tenant., and the incident of a knife was actually held by another person, not the tenant.

The tenant is not a drug dealer, and is not responsible for any guests or foot traffic; he has actually stopped people from getting in. Doors have been propped open, and the tenant closes them. The tenant keeps masks for others on the property, does maintenance on the garden and allows others to eat from it, and helps nurses. The tenant is not the problem, but a victim. His anger is no worse than other tenants.

Eviction would be a mistake, and not the best move for the landlord.

LANDLORD'S SUBMISSIONS:

The building was created to protect vulnerable people, some with challenging behaviors, and the landlord always hopes they can stay long term. This is significant for other tenants. The tenant is helpful to seniors, but there are 17 others. The tenant is scary, upsetting and sometimes physical.

Cameras were put up to stop the "he said, he said" issues.

TENANT'S SUBMISSIONS:

Having footage gathered by the landlord is considered harassment, and is a legal issue. Reasonable expectations include privacy, and does not serve in protecting rights. It should not operate as a means to get rid of tenants.

The tenant has never been a drug dealer. People trust the tenant to do their taxes and help them out, and the tenant does not deserve this.

Analysis

The *Residential Tenancy Act* states as follows:

56 (1) A landlord may make an application for dispute resolution requesting

(a) an order 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 [*landlord's notice: cause*], and

(b) an order granting the landlord possession of the rental unit.

(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.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

In this case, there is no evidence of the tenant putting the landlord's property at significant risk, or of extraordinary damage. There are accusations, but no evidence of any illegal activity. That leaves 2 reasons that the landlords may apply under this Section of the *Act*: that the tenant or a person permitted on the property by the tenant has (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; or (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

I also refer to residential Tenancy Policy Guideline 51 – Expedited Hearings, which sets out very well the requirements:

“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).”

In this case, the landlords have already issued a Notice to End Tenancy for cause, and the landlords believed that waiting for a hearing after the tenant disputed it was about 5 months away and unmanageable due to violence related issues.

I have read and heard conflicting evidence provided by the landlords and the tenant and witnesses. I also take into consideration all written witness statements. Some of the allegations made by the landlord are very dated, which would not give rise to ending the tenancy earlier than the Notice to End Tenancy would take effect. Other allegations are for incidents described that were almost 5 months before the Notice to End Tenancy was given to the tenant. Although I am not satisfied that incidents described as taken place 5 months ago are urgent, I accept that the landlords intended to show a pattern of behaviour, but that does not give rise to ending the tenancy earlier than the Notice to End Tenancy would take effect. Testimony and evidence involving other incidents have no date or time-line, and most are not within dates that are very close to each other.

What I find very relevant to the application are incidents described that took place within a reasonable time prior to April 23, 2021, the date the Notice was issued. The only evidence I have of that is very vague.

However, the landlords have provided a lengthy text message which appears to be dated April 19, 2021 to the landlord from the house manager about numerous complaints received over the past couple of months, about the tenant sneaking women into his room, heated arguments with other tenants including verbal threats, threats of physical violence causing people to be afraid for their safety, allowing people into the building during early morning hours, and playing loud music at 2 and 3 in the morning,

The tenant provided testimony about a conversation with the house manager who doesn't recall anything about the text message. I find that to be hear-say only.

The landlord also testified that on May 18, 2021 the landlord received an email at 1:00 a.m. from another tenant saying that the tenant was yelling and screaming in the house and parking lot, banging on walls and doors upset that someone stole a hamburger from the barbeque. The tenant did not dispute that testimony, however there is no threat involved, and I do not see that as being a reason to end the tenancy earlier than the Notice would take effect.

The letter dated May 18, 2021 is signed by 4 other tenants indicating similar and erratic, unpredictable or violent behaviour, as well as assault and looking to fight. It also states that managing COVID safe practices is nearly impossible due to the tenant's behaviour.

The tenant testified that it was a pre-written letter, and that a person left that meeting disgusted about the landlord's method. I agree it was a pre-written letter, and considering the disabilities of the residents, I am satisfied that most would do whatever the landlord asked them to do, such as to sign the letter.

Further, both of the May 18, 2021 events were after the Notice was issued, and I find that the latest one was to gather evidence to justify ending the tenancy. That is legal and understandable, however, it is not for me to determine whether or not the landlords had cause to issue a One Month Notice to End Tenancy for Cause, but whether or not the landlords have established that due to the allegations, it would be unreasonable or unfair to wait until after the hearing scheduled. I find that the allegations are either undated or historic, and that it would not be unreasonable or unfair to wait for that hearing, and I dismiss the landlords' application for an earlier end to the tenancy.

Since the landlords have not been successful with the application, the landlords are not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the landlords' application is hereby dismissed.

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: June 25, 2021

Residential Tenancy Branch