



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BIRKS DEVELOPMENTS LTD. and [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an early termination of the tenancy and an order of possession – as the Tenant poses an immediate and severe risk to persons and/or property; and to recover the \$100.00 cost of their Application filing fee.

The Tenant and two agents for the Landlord ("Agents") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. Two witnesses, one for the Landlord, K.T. [L.'s Witness], and one for the Tenant, H.H. [T.'s Witness], were also present and provided affirmed testimony.

During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

In terms of the Landlord's service of the Notice of Hearing, the Application, and the documentary evidence, the Tenant said she had received the Application and the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenant confirmed that she had not submitted any documentary evidence to the RTB, although, she said she emailed it to the Agent, S.S., on October 11, 2021. However, the Agent said he had not received anything from the Tenant in this regard; I note this is despite the fact that the Parties agreed that they email each other regularly. As the RTB has not received any evidence from the Tenant, and the Agent said he had not received anything, either, I find I will not be able to review the Tenant's documentary submissions

in making my Decision. However, I assured the Tenant that her testimony and witness evidence would be before me for consideration.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Early in the hearing, I asked the Agent to confirm the ownership of the residential property, as the name on the tenancy agreement was different than on the Application. The Agent advised me that he and his wife, the other Agent, own a company, which owns the residential property. As a result, and pursuant to section 64 (3) (c) of the Act and Rule 4.2, I amended the Application to ensure that the Landlord is properly identified as the corporate owner.

Issue(s) to be Decided

- Should the tenancy be ended early, and the Landlords granted an order of possession, pursuant to section 56 of the Act?
- Are the Landlords entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on September 1, 2021, with a monthly rent of \$1,450.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$700.00, and no pet damage deposit.

In the Application, the Landlord stated the following about the tenancy, so far:

Since [the Tenant] has moved in she has not only disturbed the tenants upstairs but also the neighbourhood. But the last straw was when she pulled the upstairs tenants 4 years old daughter by the arm to pull her out of the house to speak to

the cops as the grandmother at home couldn't speak english and than waking them up in the middle of the night because she locked herself out. I have attached a statement from the upstairs tenant on what actually happened that night for your review. .

[reproduced as written]

The Agent answered my question of why I should grant an early termination of the tenancy in this case, as follows:

The tenancy started September 1, [2021], and during the first two weeks cops were called several times. There is constant fighting, swearing, slamming doors. The upstairs tenant is a nurse who works on shift. It's hard to get sleep.

[The Tenant] lied to me that the next-door neighbours called the cops saying she broke in. She is going through domestic violence with her ex, and it was her calling [the police].

There is constant fighting downstairs. [The upstairs tenant] has two young girls who are scared to go outside. The neighbours are complaining also with alt this fighting, she is always afraid upstairs. She can't have any guests over, because you don't know when it will blow up.

Children are being woken up. One day she disturbed them and me at one o'clock in the morning. She had lost the keys three days prior. She was drunk, obnoxious and [the upstairs tenant] did not feel safe to open the door. [The Tenant] lied to me again that [the upstairs tenant] had called the cops.

The key was lost three days ago, as in her text statements. The door was left open. Unsafe. For her to be disturbing people at one o'clock in the morning is unacceptable.

Two weeks ago, after the – there were two men downstairs, they were fighting. Windows got smashed out of cars, people upstairs, neighbours were disturbed. The slamming doors..., she's unsafe to be around our kids, and that's why we need to end the tenancy.

The Tenant responded, as follows:

Basically, yes, the first two weeks, the cops were called twice, due to domestic violence. I spoke to [the Agent] about that and he said, 'we understand; we're here to be there for you.' He was good about it, and then also he was – my ex was temporarily staying here; he wasn't living here.

Since the whole situation, there was the incident with the – I was intoxicated one night, but the door was locked, and I didn't have my keys. I took out the screens of my windows, so I didn't want to burden the upstairs. She opened, the upstairs Tenant opened the door and refused me entry to the home, even though there are stairs, and they have access to the suite any time. So, the following day I did get a locksmith to come in and change the locks, as the Landlord suggested.

There was not constant fighting – two arguments - when the cops were called. One of the statements, that [the Agent] had sent – he said I put hands on his niece or the little girl upstairs, but I didn't. The officer was trying to get my confirmation of tenancy and my phone was dead, and he asked if I could contact the upstairs tenants. She doesn't speak English, and the young girl that I waved at, and he claimed that I put hands on the young girl; however, if I was with an officer, there would be no chance of me staying on the residence then. I have my own son that I take care of.

With the daughters not feeling safe outside – they've been there numerous times since the situation. They wave to me at the window – I've never had an issue with any of the neighbours. I've talked to them since the situation

Unfortunately, a situation – there was no situation except for the window got smashed out. There was a gentleman here and I asked him to leave, and he was refusing, and I contacted a friend to come to ask him to leave. So, my friend got him out of the house and in doing so, the gentleman smacked out his back window where it broke. Then he left. My ex was just trying to remove him, but the guy broke his window.

The Agent said:

Just that the incident with the niece. [The Tenant] would not let them close the door, and the mother-in-law feels unsafe not speaking English, and had no idea what was going on. And [the Tenant] was constantly in the door not letting them close it. Little girls who are four years old shouldn't be subjected to cops about downstairs issues. They're having issues with all this fighting.

I asked the Agent if he had given the Tenant any warnings about the potential consequences of her behaviour ending in an eviction. The Agent said:

She moved in and the next weekend was the cops. I spoke to her over the phone, and it went downhill – upstairs people constantly calling me, or cops being called to the property.

I've been in the rental business for a long time. I've had tenants living 11, 17, even 20 years; I'm not accustomed to this kind of behaviour where cops are called. It degrades the property and whoever is living upstairs.

The Tenant said:

There was – with the mother-in-law - I never tried to prevent her from trying to close the door. I had an officer present and my son's father present. How would an officer have allowed that preventing the door from shutting and... I waved her over to the little girl one time. And I spoke to the grandmother slowly to get confirmation of the tenancy downstairs. It was a minute or two. I never held anything open. I have [my Witness's] testimony.

I do recognize that that's not acceptable behaviour. The only other male here has been my son's father; we have a healthy relationship to show our son. Just my ex, who's not in the picture and my son's father, otherwise no one else at the residence. I'm at meetings and doing stuff like that, so I'm not here on evenings and weekends.

I spoke to [the Agent] about that and apologized. Again, I apologize and have done so to the upstairs, but I don't believe that they are afraid of me.

I asked the Agent why it would be unreasonable or unfair to the Landlord or other occupants of the residential property to wait for a one month notice to end the tenancy to take effect. Why do you need an early end to the tenancy, I asked? The Agent said:

Because of the kids - they are fearful. They were woken up with cop lights, and cop cars outside, and screaming and yelling for almost an hour for her trying to get [the upstairs tenant] to open the door. [The upstairs tenant] felt unsafe. [The Tenant] was intoxicated and it is unreasonable for ... these incidents were occurring on a weekly basis. The girls were crying, and they had to go to school

the next day, and people have to go to work. It is very unacceptable behaviour to anyone. The tenancy was only 2 to 3 weeks old when these things occurred.

I gave her the option of finding another place, as it didn't seem to be working out, and she said: 'No, I want to see you evict me'. She said 'no'.

The Tenant said:

I agree that it was occurring in the first two to three weeks of the tenancy starting, but since then there's been only one incident. No cop lights, no screaming and yelling at the loss of keys. Unfortunately, people do lose their keys. I tried to do everything to not knock on the door, such as finding an open window, but I did knock at the door and they refused to open the door. I would like to hear from the upstairs tenant, and they are the ones living here. I'm sure that [the Agent] and his wife have heard about it, and they were not present for two of the situations. So, I'm not sure how that works.

But there were situations that were unacceptable, and I did admit that to him and did apologize to him. I sent him an email that I'm going to AA. and hold myself accountable. The situation did occur, but I haven't had any issues with the daughters playing outside. I'm on a route of trying to make a change. Your discretion or a way to make it work would be good, or if not, I'll have to go with the route taken.

The Agent responded:

She did write me an email apologizing and explaining that he was living there. But that same night is when the window was broken... that occurred. That email was sent to me and that next morning I heard about the incident that night.

The Tenant then called her witness, who answered my questions, as follows:

[T.'s Witness], were you present on an occasion when the Tenant was trying to convince the police that she lived in the rental unit by asking the upstairs tenants for that confirmation? "Yes," he said.

I then asked him how the Tenant went about confirming her tenancy for the police, and he said:

She knocked on the back door - on the porch door. The grandmother answered and didn't speak English. They didn't want to talk to [the Tenant], so they shut the door.

There was a police officer there, so they essentially shut the door in the police officer's face, too? I asked.

[She] didn't try to keep the door open to get confirmation of the tenancy.

The Agent was offered an opportunity to cross-examine the T.'s Witness. He said the following in response:

I was not present, but I believe the cops had knocked on their front door, not the back door. This incident wasn't plain "close the door". She was trying to keep her foot in the door. That's all I can elaborate on.

The Landlord then called his witness, who is one of the upstairs tenants. She answered my questions, as well. I asked her what she knows about the incident when the Tenant was trying to get the non-English speaking mother-in-law to confirm her tenancy for the police. The L's Witness said:

That happened on September 14th. I had come home from my nightshift. When I woke up, and I saw a lot of text messages about it. There were three other incidents on other dates.

I was sleeping, I do long night shifts, I was not aware of what was going on. That happened – my mother-in-law explained to me that [the Tenant] approached and knocked on the back door. She doesn't speak any English. She tried to slowly open the door and [the Tenant] tried to open it more. There was a cop in the backyard and four other cops in the front yard. My 4-year-old daughter was here, and [the Tenant] figured my mother-in-law wasn't able to explain, so [the Tenant] was trying to get my younger daughter involved. I was told that [the Tenant] was trying to grab my daughter; my mother-in-law was scared. The cop was in the backyard and told [the Tenant] to leave it, that it was all right.

She was trying to grab her; she was scared; she has no clue what's going on. Whether she touched her or not, [the Tenant] was trying, and the impact of it was not nice for either of us.

I asked the Tenant if she had any questions for the L's Witness. The Tenant said:

No questions, I just think it needs to be said, I mean, the officer – if I was trying to grab a child, I see that as attempted assault. As a mother myself, I would never attempt anything of the sort. That that's being brought forward.... If I can, I will get a statement from the officer. If the grandmother doesn't speak any English, how did she know what the officer said, but couldn't understand me – it's contradicting. ... Why was that the only thing the grandmother understood?

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

In order to establish grounds to end a tenancy early under section 56 of the Act, a landlord must not only establish that they have cause to end the tenancy, but that it would be unreasonable or unfair to require the landlord to wait for a one month notice to end the tenancy under section 47 of the Act to take effect. Based on all the evidence before me, I find that the Landlords have met this burden.

Under section 56 of the Act, the director may end a tenancy and issue an order of possession only if satisfied that the Tenant or a person permitted on the residential property by the Tenant has done any of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- . . . , **and**,
- 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 to take effect.

I find that the Tenant has significantly interfered with and unreasonably disturbed other occupants and the Landlord of the residential property. The Tenant acknowledged that the police were called on more than one occasion in the first few weeks of the tenancy. The Tenant acknowledged and apologized for waking up the upstairs tenants at one o'clock in the morning. The Tenant also acknowledged that she had a gentleman over who would not leave, and therefore, the Tenant had to call someone for help to make

him leave. The Tenant acknowledged that she called her ex, and he came and moved the unwelcome guest out. Unfortunately, the guest broke the back window of the ex's vehicle. I also find that this would have been an occasion in which there was screaming, shouting and/or swearing from the participants in this incident.

The Tenant said that the presence of a police officer when she was allegedly trying to get into the upstairs unit would have prevented her from being pushy or from grabbing or trying to communicate with the four-year-old. However, the evidence before me is that the police officer was in the backyard, not with the Tenant at the porch door. As such, I find it unlikely that he would have seen what she was doing, although he did discourage her from continuing to interact with the other tenants, ultimately. I find the police officer would not have been in the right place to restrict the Tenant's behaviour.

I find that the Tenant has introduced an environment that is not conducive to the other occupants of the building having quiet enjoyment of the residential property. I find that the Tenant has a lifestyle that has led to the incidents and the complaints from the other tenants in the residential property, as well as the neighbours. Accordingly, I find the Landlord is eligible for an order of possession pursuant to section 56 of the Act.

I accept the Landlord's evidence that allowing the Tenant to continue the tenancy would prolong the environment in which the other tenants, occupants, and the landlord are significantly interfered with and unreasonably disturbed on a continuous basis. I am satisfied that it would be unreasonable and unfair to the Landlord and the other occupants to wait for the One Month Notice to End Tenancy to take effect, as I find that without an early end to the tenancy, this unreasonable environment will continue.

I therefore confirm the Landlord's Application to end this tenancy early, pursuant to section 56 of the Act. I grant the Landlord an **Order of Possession** of the rental unit, which will be **effective two days after it is deemed served on the Tenant**, pursuant to sections 56 and 90 of the Act.

I also confirm the Landlord's claim to recover the \$100.00 Application filing fee. I award the Landlord with recovery of the **\$100.00** Application filing fee from the Tenant, pursuant to section 72 of the Act. Further, I authorize the Landlord to deduct \$100.00 from the Tenant's security deposit in full satisfaction of this monetary award.

Conclusion

The Landlord's Application is successful, as they provided sufficient evidence on a balance of probabilities to establish that the Tenant has created an environment in which she significantly interferes with and unreasonably disturbs other occupants and tenants are in the residential property, as well as the Landlord.

Pursuant to section 56 of the Act, I grant an Order of Possession of the rental unit to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I authorize the Landlord to retain **\$100.00** from the Tenant's security deposit, in satisfaction of the monetary award of recovery of the Application filing fee.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: October 26, 2021

Residential Tenancy Branch