



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET**

Introduction

The Landlord sought an early termination of the tenancy and an Order of Possession for the rental unit by Expedited Hearing pursuant to Sections 56 and 62 of the *Residential Tenancy Act* (the “Act”).

The hearing was conducted via teleconference. The Landlord’s Agent, EM, and the Tenant’s Legal Advocate, JK, attended the hearing at the appointed date and time and provided affirmed testimony.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the “RTB”) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties were each given a full opportunity to be heard, to call witnesses, to question the other party, and make submissions.

EM served the Tenant with the Notice of Dispute Resolution Proceeding package and all evidence (the “Notice”) for this hearing by a process server who posted the Notice on the door on October 30, 2021. EM submitted the required Form RTB-9 documenting proof of service of the Notice of Expedited Hearing. I find that the Notice was deemed served on the Tenant on November 2, 2021 pursuant to Sections 89(2)(d) and 90(c) of the Act.

Issue to be Decided

Is the Landlord entitled to an early termination of the rental unit tenancy and an Order of Possession?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

This periodic tenancy began on March 1, 2020. Monthly rent is \$725.00 payable on the first day of each month. A security deposit of \$362.50 was collected at the start of the tenancy and is still held by the Landlord. EM testified that the Tenant is still residing in the rental unit, however, JK advised that she did not know if the Tenant was still residing in the rental unit.

The rental property is a duplex divided into four rental units. The Tenant lives in a one bedroom basement suite with his own entrance, and has upstairs tenants above him with three children in a three bedroom unit.

The Landlord argued an early termination of the tenancy should be granted due to the Tenant's actions as follows:

1. The Tenant has been verbally abusive to the children who live in the rental property and play in the backyard. The mothers' of the children fear for their children's safety;
2. The Tenant is banging on his ceiling approximately three times per week;
3. The Tenant has denied access to the laundry room facilities to the upstairs tenants; and,
4. The RCMP were called out on September 30, 2021 and October 21, 2021 to deal with the Tenant.

The details of the first incident regarding police involvement concern an event which took place on October 21, 2021. EM testified, a neighbour of the upstairs tenant sent an email to EM recounting the events her children and the upstairs tenant's children experienced from the respondent Tenant. She shared her children were playing hide and seek in the rental property's backyard, when the respondent Tenant *"came out screaming and swearing at them because they were hiding under the stairs, which for some reason made him furious. He screamed, 'Get the f__k out of my yard!'"* The upstairs tenant called the police after this exchange. The neighbour's email states that the respondent Tenant becomes enraged if there is any amount of noise coming from the upstairs family. The upstairs tenant and the neighbour are close friends, but since

the respondent Tenant moved into the downstairs rental unit, the neighbour has lessened her visits to the upstairs tenants' home, she said,

This is due to the fact that [the Tenant] becomes enraged if there is any amount of noise coming from the upstairs unit. And with a family of five living there, that is very much impossible. I've spoken to [the upstairs tenant] numerous times when she's been upset because [the Tenant] has screamed at them, refused them laundry time, and once he even tried to physically assault [the upstairs tenant's] partner in their driveway. I have also been told by [the upstairs tenant] that [the Tenant] is apparently not to be left alone with children. She was told this by a Ministry of Children and Family Development worker.

EM testified that the upstairs tenants share laundry facilities for the rental unit with the respondent Tenant. The upstairs tenants must pass through a door which accesses a hallway leading to the laundry room. On August 26, 2021, the upstairs tenant tried to get their laundry done, but the respondent Tenant had locked the door that the upstairs tenant needed access through on their scheduled laundry day.

EM testified that in the Spring of 2021, the respondent Tenant has taken to banging on the ceiling in his unit. She maintained this activity goes on about three times per week.

On September 30, 2021, the respondent Tenant was screaming at the upstairs tenants when the father was sweeping, and their daughter had grabbed a book. EM testified that she called the police on this occasion.

Overall, EM states that the respondent Tenant causes discomfort and concern to the other three tenants in the rental property. EM testified that the respondent Tenant causes an imminent safety concern for the other families in the rental property.

JK stated that all the evidence EM provided was second hand or hearsay, and that the standard of proof required to uphold an early end of tenancy is high. She said it was unfortunate that the respondent Tenant had not attended this hearing.

JK questioned EM about her evidence about whether MCFD was investigating the respondent Tenant. EM answered that the upstairs tenant told her verbally that a ministry social worker attended the rental property, told her that the respondent Tenant

is not to be left alone with children, but later deemed everything to be fine. EM also said that the respondent Tenant was called by MCFD and he was annoyed by that.

JK does not believe that a disagreement between tenants' use of the laundry room is so insurmountable that an early end of tenancy is warranted. EM replied that being denied access on days when it is the tenants' scheduled use days is a significant interruption for a family of five.

JK questioned why we did not have information about immediate concerns from the people residing in the rental property. EM maintained that she is acting to represent all the other tenants living in the building and she provided her evidence about the interferences and the disturbances.

Analysis

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, in this application, is on the landlord to prove, on a balance of probabilities, the grounds on which this application for an early end to tenancy were based.

In this matter, Section 56 of the Act is relevant:

- 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.*

An RTB hearing is a quasi-judicial proceeding, which is a legal process, but is less formal than a court. Evidence at a dispute resolution hearing at the RTB is not governed by the laws of evidence as in a court, and, pursuant to Section 75 of the Act, an arbitrator may admit as evidence any oral or written testimony or any record or thing that is considered to be necessary and appropriate, and relevant to the dispute resolution hearing. I find that the evidence presented, and orally given, by the parties was both complementary and relevant to this matter

EM's oral testimony describing several current occurrences by the Tenant was supported by an email from a close friend neighbour. I also accept EM's evidence that RCMP files were open due to calls made after significant disturbances, at least one of those involving children. The respondent Tenant's angry outbursts on the upstairs tenants, and their children raises significant interference and unreasonable disturbances on these tenants.

The respondent Tenant's alleged physical assault on the male tenant in the driveway seriously jeopardizes the health or safety of another tenant. Finally, the respondent Tenant denying access to a service, e.g. laundry facilities, is a service that a family of five would rely on for living. The respondent Tenant's advocate did not provide an

explanation for any of the events submitted into evidence. I find that the respondent Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property.

EM provided a One Month Notice to End Tenancy for Cause, and a hearing on that matter is set for March 2022. Recent events, I found, have led to significant interferences and unreasonable disturbances on not only other tenants in the residential property, but also the Landlord. The Landlord believes there is an imminent risk to the safety of the children and their parents. I find there is a ring of truth to what the Landlord submits, and it would be unfair to the other occupants and the Landlord to have to wait for a notice to end the tenancy under Section 47 of the Act to take effect.

I find the Landlord has satisfied me that an order to end this tenancy early is warranted and is entitled to an Order of Possession, which will be effective two (2) days after service on the respondent Tenant.

Conclusion

I find the Landlord's application is successful. The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 16, 2021

Residential Tenancy Branch