Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

On December 8, 2021, the Landlord made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession pursuant to Section 56 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing, with V.G. attending as a co-owner of the rental unit and J.G. attending as an agent for the Landlord. Tenant K.P. attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Landlord advised that each Tenant was served the Notice of Hearing package by registered mail on December 9, 2021. The Tenant confirmed that he received his package and that his co-Tenant was also served a Notice of Hearing package; however, she did not claim it. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were duly served the Notice of Hearing packages.

The Landlord also advised that the Notice of Hearing packages contained his evidence;

however, he did not serve the Tenants with his additional late evidence. The Tenant confirmed that he received the Landlord's evidence in the Notice of Hearing package, but he stated that he could not discern the images in the pictures as they were black and white, and they were not clearly visible. The Landlord stated that the pictures he provided to the Tenants were in black and white, but despite this, he could clearly view the images in these pictures. It is not clear to me why the Landlord would have submitted colour photos to the Residential Tenancy Branch but then only provided the Tenants with black and white photos. As the Tenant had difficulty viewing these photos, I have excluded this evidence and will not consider it when rendering this Decision. However, I have accepted the rest of the Landlord's documentary evidence and will consider that when rendering this Decision.

The Tenant advised that he served their evidence to the Landlord by posting it to the door of the Landlord's address left for service, on January 8, 2021. As well, he stated that he did not serve his digital evidence to the Landlord. The Landlord confirmed that he received the Tenants' documentary evidence on January 10, 2021, that he had reviewed it, and that he was prepared to respond to it. Despite this evidence being served late, as the Landlord was prepared to respond to it, I have accepted the Tenants' documentary evidence and will consider it when rendering this Decision. However, as the Tenant did not serve their digital video evidence, I have excluded this evidence and will not consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony

of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on November 1, 2021, that rent was currently established at an amount of $4,100.00 per month, and that it was due on the first day of each month. A security deposit of $2,050.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

The Landlord advised that he was seeking an early end to the tenancy due to the Tenants operating a commercial enterprise in the rental unit by running a business called a Crashpad, which is essentially a rooming house. He stated that prior to renting the unit, the Tenants asked him if it was ok to sublet and he informed them that it was fine if there were not too many people, which he “took to mean two to three occupants.” He submitted that this was a lie as the Tenants never moved in, but they did set up multiple bunkbeds in the rental unit where they housed up to 15 occupants. He referenced the documentary evidence submitted to support his position with respect to the operation of this Crashpad business.

He stated that the Tenants did not get his written permission to house these occupants, that the tenancy agreement does not permit these short-term rentals, and that the number of occupants staying in the property violates the terms of the agreement. Furthermore, he advised that the property is not zoned for such a business and he referenced documentary evidence supporting this submission. Moreover, he stated that as a result of the Tenants’ activities, his house insurance has been cancelled and he has been unable to obtain any type of insurance to protect his property. He also cited the documentary evidence submitted to corroborate this claim of a massive liability, as well as the fact that his mortgage is in default as a result of not having insurance. In addition, he noted that the Tenants do not have any insurance that would cover this type of business either.

J.G. advised that he has attended the rental unit on three separate occasions, and he has observed 13 separate beds that have been set up, as well as a number of unassembled beds. Therefore, the number of occupants could dramatically increase.

V.G. reiterated the importance of having insurance and noted that the Landlord has no ability to obtain insurance due to the Tenants’ behaviours.

The Tenant advised that he informed the Landlord at the start of the tenancy that his intention was to rent the property to be able to share it with guests, and/or co-workers, to offset the cost of the rent, and he stated that the Landlord accepted this. As such, he sub-let the rental unit to three other people, at the beginning of the tenancy, based on his discussion with the Landlord. However, he then contradictorily stated that he did not have permission to sub-let, and that the tenancy agreement was amended to define what a sub-lease was and to allow for the Tenants to sub-let to their co-workers.

He then cited an email he sent to the Landlord later requesting information on how they could sub-let the rental unit. He stated that the Landlord wanted him to sign a document stating that no more than eight people could live in the rental unit, but that the Landlord also stated that he did not care how many people lived there. He testified that he had a meeting with the Landlord on November 10, 2021 to get clarity on the rules for sub-letting the rental unit; however, the Landlord would not provide any further amendments to the tenancy agreement. He confirmed that it is his desire to sub-let parts of the rental unit and that he sent an email to the Landlord on January 5, 2021 requesting the Landlord's written permission to sub-let the rental unit.

He submitted that he moved into the rental unit on December 1, 2021 and this is his permanent residence. As well, he indicated that the co-Tenant lives in Montreal and that the rental unit is not her permanent residence. He made submissions on several irrelevant issues and he indicated that there were many inconsistencies in the Landlord's submissions.

The Landlord confirmed that he had discussions with the Tenants about their intentions for the rental unit and he was "[given] the idea" from the Tenants that it would be rented to a "couple of people". It is his position that he agreed to allow the Tenants to rent to up to six extra people; however, the Tenants would require the Landlord's written consent first, for each extra person.

V.G. advised that an "assumption was made" that the Tenants would rent to two other people only, and always with the Landlord's written consent. She stated that the Tenants were informed verbally and in writing that written consent was always required to do so.

The Tenant advised that he was confused because of inconsistent approval of what was discussed and what was indicated in the tenancy agreement.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 56 of the *Act* establishes the grounds for the Landlord to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. In order to end a tenancy early and issue an Order of Possession under Section 56, I need to be satisfied that the Tenants have 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 interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that 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,* ***and***

it would be unreasonable, or unfair to the landlord, the tenant 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.

I find it important to note that when two parties to a dispute provide equally plausible 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. Given the contradictory testimony and positions of the parties, I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, the consistent and undisputed evidence is that the Tenants approached the Landlord and expressed desire to rent the property out to other people before the tenancy began. I find that the documentary evidence of an excessive number of beds in the rental unit is consistent with the other evidence of advertisements of operating some sort of "Crashpad" out of the rental unit. While I acknowledge that there was likely some confusion about the Tenants' ability to sub-let the rental unit, I do not find that there is any doubt that the evidence supports that the Tenants were intending to, and did in fact operate some sort of business enterprise out of the rental unit. This is not what residential tenancies are intended for, and I am satisfied that the Tenants were attempting to mislead the Landlord about the intended use of the property.

I also note that the Tenant advised that he did not even move into the rental unit at the start of the tenancy, but moved in a month later, allegedly. I find that I am doubtful of this submission. In addition, given that the other co-Tenant's permanent residence is in Montreal, I do not find there to be any evidence that supports the Tenant's claim that they truly wanted to sub-let the rental unit as described by the policy guideline. I find that this further supports a conclusion that it was their intention to use the property in another manner other than to reside in it. In addition, I found the Tenant's testimony to be vague, evasive, and unpersuasive during the hearing. For all of these reasons, I am doubtful of the credibility of the Tenant's submissions, and I prefer the Landlord's evidence on the whole. I am satisfied that the Tenants saw this rental unit as an opportunity to operate some sort of business venture to make money, and that they had no intention to occupy the rental unit as contemplated by the *Act*.

Based on the sheer number of beds and bunkbeds in the rental unit, some of which were still unassembled, and the documentary evidence of advertising for this business, I find that there is no question that the Tenants had rented to an excessive number of occupants, which was contrary to local municipal by-laws. Furthermore, I am satisfied that in doing so, this had resulted in the voiding of the Landlord's insurance.

Ultimately, I find that the Tenants' actions were intentional and that they posed a danger that, at the very least, would fall into the categories of significantly interfering with or unreasonably disturbing another occupant or the Landlord and seriously jeopardizing the health or safety or a lawful right or interest of the Landlord.

The Landlord must also demonstrate that "it would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property, to wait for a notice to

end the tenancy under section 47 for cause" to take effect. Based on the consistent evidence and undisputed testimony, I accept that there is a genuine concern for the ongoing safety of the property as the Landlord is unable to insure the property. I find that there is a realistic possibility that future incidents may occur that would jeopardize the rental unit should this tenancy continue.

Under these circumstances described, I find that it would be unreasonable and unfair to the Landlord to wait for a One Month Notice to End Tenancy for Cause to take effect. For these reasons above, I find that the undisputed evidence is sufficient to warrant ending this tenancy early. As such, I find that the Landlord is entitled to an Order of Possession.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the $100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of this claim.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: January 13, 2022

Residential Tenancy Branch