



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros. Holdings Ltd. c/o FirstService Residential BC 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 they say the Tenant, M.N., poses an immediate and severe risk to people and/or property; and to recover the \$100.00 cost of their Application filing fee.

The Tenants, K.M. and M.N., and two agents for the Landlord, S.W. and D.K., 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. One witness for the Landlord, M.M. ("Witness"), was also present and provided affirmed testimony. An observer assisting the Landlord, S.M., also attended with the permission of the Parties.

During the hearing the Tenants and the Landlord 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.

The Witness stated that on May 5, 2022, she observed a colleague, S.A., serve each Tenant in person with the Landlord's Notice of Hearing documents, as well as all of the Landlord's documentary evidence that was submitted to the RTB. As such, she confirmed that each Tenant had received a complete set of the Landlord's documents. The Tenants confirmed in the hearing that they had received these documents and had reviewed them prior to the hearing.

The Tenants said that they had submitted 37 pages of documents to the RTB; however,

I had no documentary submissions from them before me, nor did the Landlords say they received anything from the Tenants for this proceeding. As it turned out, the Tenants had applied to cancel a notice to end tenancy that the Landlord had issued separate from this matter; however, that is not an issue before me in this proceeding. The Agent confirmed that the Landlord had not received any evidence from the Tenants for this matter. As such, I find that I have no documentary submissions before me from the Tenants.

The Tenants indicated that they had tried to submit these documents to the RTB when they attended the Burnaby office on May 10, 2022; however, their documents were not, in fact, submitted for my consideration in this matter, therefore, they are not before me in making my decision. However, I advised the Tenants that their testimony is evidence before me, and that they can refer to the evidence that they had wanted to serve, as appropriate throughout the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses in the hearing, and they 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.

I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Agent advised me of the property management company representing the owner, so I have amended the respondent's name in the Application, in this regard pursuant to section 64 (3) (c) and Rule 4.2.

Issue(s) to be Decided

- Should the Landlord be granted an early termination of the tenancy, and an order of possession?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on June 1, 2021, with a monthly rent of \$1,400.00, due on the first day of each month from the Tenants to the Landlord. The Parties agreed that the Tenants paid the Landlord a security deposit of \$700.00, and no pet damage deposit. The Agent confirmed that the Landlord still holds the security deposit in full.

I asked the Agent why I should end the tenancy early and provide the Landlord with an order of possession, and he said:

The Tenant has demonstrated very, very disruptive behaviour for several months now. As in our evidence package, it has culminated in scary behaviour that is a danger to other tenants and potentially to the building. Police are there on a daily basis. He escaped custody, and turned up at building with bare feet, followed by 12 officers needed to take him back in to custody.

The evidence package contains numerous letters from other tenants. They are too scared of [M.N.'s] behaviour to put anything in writing. We have received at least one official notice to vacate because of [M.N.'s] behavior. It's not in the emails, but we have been informed by RCMP that they consider [M.N.] to be dangerous and recommended the eviction process now.

The Tenant, K.M., replied, as follows:

I disagree with first part being out of custody. The police showed up to take him to the hospital. He had left the hospital, because it was taking a long time. The police called me to come down to the unit; I was visiting a friend on the second floor. I didn't know he was home. He was not in custody - not in trouble – he just went to the hospital for a mental health check to be done.

As well, the other tenants' letters - their issues came up all around the same date. It makes me think the manager asked for them to write them. Their letters were all from April 3 to 10 – the same week; in my head this is an invasion of privacy.

Travis is the Tenant who the Landlord said vacated. He works with my dad and brother; I knew them, as well. They moved to a bigger apartment or home. Their tenancy was up at the same time mine. That's why they left.

The Agent said he had not been referring to “Travis” when describing a tenant who ended their tenancy, because of a fear of M.N. He said: “They were too scared of [M.N.], so they requested I not refer to them specifically.”

I asked the Agent if he had given the Tenants any written warnings about the consequences of continuing this behaviour, and that it might result in eviction. He said they had given the Tenants breach letters on March 14th and 30th, both of which he said were in the evidence submitted by the Landlord.

One of the “breach” letters given to the Tenants by the Landlord includes the following, dated March 14, 2022:

Please be advised that we have received several complaints indicating that excessive noise in the form of yelling and loud banging has been coming from your suite. ... Lastly, complaints have been made that you are threatening other residents of the building.

We demand that you ensure that you are respectful to other tenants’ rights to quiet enjoyment of the residential property, cease smoking in the unit and all common areas on the property and stop all threatening speech or behaviours or we will have no choice but to move forward with ending your tenancy.

The Landlord also quoted sections of the tenancy agreement and addendums on the subject of “Conduct” and “Crime Free Housing” in this letter.

In a letter the Landlords sent to the Tenants dated March 30, 2022, they said:

Further to our letter on March 14, 2022, we have received additional complaints of excessive noise in the form of shouting and swearing. . . . Lastly, complaints have been made that you are still of the insulting and intimidating other residents of the building.

This letter of breach is a **final warning**, Failure to comply with the terms of your tenancy agreement as stated below will result in an immediate One Month Notice for a cause. .

[emphasis in original; reproduced as written]

The letter again includes clauses from the tenancy agreement on “Conduct” and “Crime Free Housing”.

The Parties agreed that the Landlord had served the Tenants with a One Month Notice to End Tenancy for Cause dated April 19, 2022 ("One Month Notice"). I asked the Landlord why it would be unreasonable, or unfair to the Landlord or other occupants of the residential property, to wait for the One Month Notice to take effect? I asked why I should grant the Landlord an early termination of the tenancy and an order of possession of the rental unit? The Agent said:

We have numerous tenants threatening to give notice – it would result in financial hardship for the Landlord. Also, because of the risk to physical safety. [M.N.] has threatened numerous tenants including the building manager's wife. He even kicked a baby stroller of a neighbour.

[K.M.] replied to the Agent's comments, as follows:

The baby stroller was [S.'s]. She has a 5-year-old, and [M.N.] was coming down the hallway, and she noticed him. He had a bike, and he opened the door and she came running from behind and blocked the whole hallway, so that he couldn't get by. She has a disability – not that I'm judging her – but she's not really all there. So when she's standing looking at you - she stood there for five minutes. She just stood there and stared at him. Also in the police report, she was thinking it was something worse. She was a tenant who gave me photos, baby stuff for my daughter. We were close to this woman. Was there any issue at that time, no. He tripped over the side of the stroller and he said he's sorry.

The Landlord submitted some complaints they had received about the Tenants from other tenants in the residential property. These include the following:

Sat 3/12/2022

Good evening

On Tuesday March 8 2022, at 6:50 am me and [C.] were woken up by very loud banging and then I heard yelling and swearing and got concerned. It was the tenants of [rental unit]. They have been constantly fighting really loud keeping us up at night and waking us up in the morning. Mostly the male yelling at the female. So I was worried for her safety. I rushed to the balcony and the male was out smoking a cigarette on his balcony which he is also not aloud to do but the both of them constantly smoke and cough really loud. So obviously concerned I asked if everything was okay because I was concerned for the females safety. I

was met with instant swearing and he called me a bitch, a fat cunt and a loser. I was really not happy. And then he threw his cigarette at my face and was threatening. The woman brought out a baby and I was instantly angry because they have been fighting and he's been yelling and hitting stuff and it's not safe for a baby. The male then threatened me and [C.] lives and yelled that he knows where we live. And then he came upstairs and slammed on our door and I was so scared and triggered a panic attack because he yelled that we better watch out. We are very concerned because our front door is not stable and if he wanted to he could easily get into the apartment. And as an abuse/SA survivor I do not feel safe living here with that man living here. He threatened our lives. I yelled through the door that I was calling the cops and he swore at me and told me I would regret it. We can no longer use our balcony because everytime we try to go outside one of them comes out and smokes. I have health issues and all these smokers are not following the rules and it's affecting my health and my partners asthma. He had to be hospitalized. Also these neighbors have problems with a lot of the neighbours I hear him constantly yelling at people and being rude because he's asked not to smoke on the porch because they smoke a lot. So they are making it very uncomfortable to live in the building. I called the cops and called a wellness check for the baby. I do not feel safe anymore and we have to exit the building a different way to avoid him. And I don't think it's fair for the rest of the people living here that we are harassed almost everyday. We had to call [C.'s] parents and we haven't stayed in the apartment for a day because we were advised by the police to leave. Which is not fair at all.

Regards [J.]

[reproduced as written]

Another letter the Landlord said they received from another tenant about the Tenants reads:

April 1/22

ATT: Building Manager

This is from [M.] in #[XXX]. Would you please do something about the guy in [rental unit]? I am sick of all the yelling, screaming, fighting, door slamming and threats to his wife. It can't be good for her or any of there niegbours. Thanks, [M.]

[reproduced as written]

Another tenant wrote the following in a letter addressed to the Landlord:

Hi [A.] just checking in to see if anything has been done about the tenants of [rental unit]. We are pretty uncomfortable living here [at the moment]. With being woken up every morning, we can no longer use our balcony in peace or have our windows open during the day. We also have stopped using the main entrances to avoid them at all costs. I am a [domestic violence] survivor and I haven't heard anything from the cops either. I am having constant panic attacks and it's making it very hard for me to work. This has been effecting out daily lives at this point. We had to stay at our parents house for a week just to sleep. We are going to try to invest in privacy screens to block the smoke from our apartment as well as make it harder for them to talk to us or watch us. We have been keeping our blinds closed as well because when they are outside playing with their child we have caught them a couple times trying to look into our windows and I've seen the male with his phone a couple times.

The Landlord submitted at least seven other letters they had received from tenants complaining about similar experiences from the behaviour of the Tenants at the residential property.

I asked the Agent D.K. if he had received any complaints from other tenants in the residential property and he said the following:

The disturbances were so violent and aggressive. Two of them contacted me directly, but were too afraid of writing it down. Others agreed to put their complaints in writing.

On March 4 I came back from Mexico; I started as building manager on March 20. But I reported to police on March 8 a loud disturbance. The tenant next to me asked what's going on and was sworn at and told they knew where she lived. I phoned 911, because the altercation was so violent. I was concerned that the woman was being assaulted, that's what the tenants came out on the balcony themselves for. She phoned 911, as well

The Landlord submitted three photographs of the Tenant, M.N., at the residential property, being detained by the police.

The Tenant, K.M., replied to the Agent's testimony: "If [M.] was dangerous, they wouldn't allow me to be in the same unit. If there was a danger, he would have been removed from this unit."

The Agent responded:

Just re the danger that Mr. [N.] presents, child protection services did take the child from the home, in response to her comment that he isn't dangerous. I think that establishes that he is.

[K.M.] replied:

Child services did take our daughter, because of fake accusations from RCMP. We are working with the social worker. [M.] and I go through Touchstone. Following up with what we were doing. We are in all of that process now. They have nothing against [M.]. [M.] is allowed to see the child.

[M.N.] testified, as follows:

On the day my child was taken by social service The night before I was left with her in my care, as my spouse had left the building for the night. They had no reason to be concerned about the baby in my care. If they would have left me with the child for the night, they would have taken her from me that night.

I asked the Tenants what is required to have the child returned to their care, and they said: "Following through with Touchstone and going to court."

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 the tenancy early under section 56 of the Act, the landlord must not only establish that he has cause to end the tenancy, but that it would be unreasonable or unfair to require the Landlord to wait for a notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the testimony of the Landlord, I find that they have met that burden.

While some of the Landlord's evidence is hearsay, I note that hearsay is allowed in administrative hearings to a larger extent than it is in court. Further, I find that the Landlord's evidence is internally consistent, and consistent between different types of evidence – different tenants tell the same story in their handwritten letters of complaint. As such, I find this raises the weight that I can give to the hearsay submitted before me.

I accept the Landlord's evidence that the Tenants have significantly interfered with or unreasonably disturbed another occupant and the Landlord of the residential property. The reports of regular yelling and violence within the rental unit, as well as threats to other tenants who respond with concern are consistent with each other.

I find such behaviour, along with the police having to be called to the residential property on a regular basis would cause the Landlord, and the other tenants to be unreasonably disturbed.

Due to these conclusions, I, therefore, find that the Landlord has proven that the Tenants have significantly interfered with or unreasonably disturbed another occupant and the Landlord, in conflict with the Act.

I am also satisfied that it would be unreasonable and unfair to the Landlord to wait for the One Month Notice to End Tenancy to take effect, as I find without an early termination of the tenancy, other tenants will have to continue to stay away from their own units for fear of what the Tenant, [M.N.] might do to them. I also note that the Tenants' fight with each other regularly, which disturbs the sleep and general well-being of the other tenants in the building.

I therefore find that the Landlord is successful in their Application to end this tenancy early. **Pursuant to section 56** of the Act, I award the Landlord with an **Order of Possession effective two days** after deemed service on the Tenants.

Given their success in this matter, I also award the Landlord with recovery of the **\$100.00** Application filing fee, pursuant to section 72 of the Act. The Landlord is authorized to retain \$100.00 from the Tenants' \$700.00 security deposit in complete satisfaction with this award.

Conclusion

The Landlord's Application is successful, as they provided sufficient evidence to meet their burden of proof on a balance of probabilities.

The Landlord is granted an **Order of Possession effective two days after service** on the Tenants. This Order of Possession is granted pursuant to section 56 of the Act.

The Landlord is also awarded recovery of their **\$100.00** Application filing fee. I authorize

the Landlord to retain \$100.00 from the Tenants' \$700.00 security deposit, in complete satisfaction of this monetary award.

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: May 15, 2022

Residential Tenancy Branch