



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an order for early end to tenancy and an Order of Possession of the rental unit pursuant to section 56; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Landlord's agent MM and the Tenants attended this hearing. They were given a full opportunity to be heard, to present affirmed testimony, and to make submissions. During the hearing, the Tenants called a witness, PS, to testify.

All parties were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord submitted a Proof of Service form which indicates that two notice of dispute resolution proceeding packages (the "NDRP Packages") were given to the Tenants in person on July 29, 2022. Based on the Landlord's evidence, I find that the Tenants were sufficiently served with the NDRP Packages in accordance with section 71(2) of the Act.

The Landlord submitted documentary evidence including complaint letters from other tenants, warning letters to the Tenants dated August 11, 2021 and June 16, 2022, as well as a summary of events. MM stated that copies of the complaint letters were not provided to the Tenants to protect the privacy of other tenants. However, Rule 10.3 of the Rules of Procedure requires an applicant to serve each respondent with copies of the evidence that the applicant intends to rely on at the hearing. As discussed during the hearing, the complaint letters are excluded from the evidentiary record as they were

not properly served on the Tenants. Based on MM's testimony, I find the Tenants were sufficiently served with the warning letters and the Landlord's summary of events in accordance with section 71(2) of the Act.

The Tenants did not submit documentary evidence and relied on oral testimony for this hearing.

Issues to be Decided

1. Is the Landlord entitled to end the tenancy early and an Order of Possession?
2. Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The parties' tenancy under their current agreement commenced on September 17, 2021 and is month-to-month. Rent is currently \$725.00 per month and is based on a percentage of the Tenants' income. The Landlord submitted a copy of the tenancy agreement into evidence.

MM stated that the Landlord is requesting an early end to the tenancy as the Tenants and their guests have been disturbing and endangering other tenants and staff.

MM explained that BC Housing took over the rental property in May 2021, and the parties entered into a new tenancy agreement with lower rent in September 2021.

MM testified that there have been complaints about the Tenants and their guests since June 2021, as follows:

- June 13 and 14, 2021 – Tenants' guest with dog barking at 3:00 am; guest swearing at and threatening other tenants
- June 16, 2021 – Tenants' probation officer contacted due to "verbal assault"
- June 17, 2021 – Tenants and 6-10 guests throwing items at another tenant's door

- July 22, 2021 – Tenants' guests climbed over fence and yelling at dog; 10 people at 3:00 am being loud, and swearing when told keep it down
- August 6, 2021 – Tenants' guest swore at complainant neighbour; 8-10 guests outside barking at a dog, causing the dog to bark more
- September 1, 2021 – non-resident shot off a 22 handgun outside the rental unit
- April 11, 2022 – Tenants' guests throwing garbage, stripping wires, and working on bikes; neighbour complained about noise and doesn't feel comfortable with guests there
- April 19, 2022 – neighbour requests transfer due to Tenants and their guests; neighbour states they have been "harassed, yelled at, threatened, things thrown at my unit door, and pushed", does not feel safe to leave own unit
- July 26, 2022 – Tenant throws items at another tenant's property

MM testified the last "major" event occurred on July 27, 2022, when a guest of the Tenants presented the Landlord's security team with a "rifle" as the guest was being asked to leave the property. MM testified there were a few previous incidents with this particular guest. MM testified that on July 26, 2022, this guest verbally abused and threatened a security guard. MM acknowledged that this guest is not one of the guests identified in the Landlords' previous warning letters to the Tenants.

MM testified she received an account of the incident on July 27, 2022 from the security guards, RW and KJ, who are employees of the neighbourhood watch. MM testified that she was given the following details:

- RW and KJ had followed the guest back to the rental unit.
- RW knocked on the door and asked the guest to leave as the guest was banned from the property. The guest slammed the door, yelling and swearing.
- The guest came out from the rental unit carrying a "rifle", and the yelling continued. The guest got back into his car, spat at KJ and made a gesture as if to run KJ over.

MM confirmed the police were called. The Landlord submitted an RCMP file number relating to this incident.

One of the Tenants, JT, testified that he sold his old "pellet gun" to the guest, who came to the rental unit to pick it up. JT testified he didn't expect the guest to "flip".

The Tenants testified they were not home when the guest came to the rental unit on July 27, 2022. JT testified he had told the guest he could take the pellet gun and go. JT

testified that security was after the guest when the guest showed up and was arguing with him. JT testified he explained to security afterwards that it was not a real gun. JT testified the police did not attend at the rental unit.

JT testified that since the incident, the guest came back to the rental property once to help JT to fix his jeep. The Tenants testified they have told the guest to not come back to the rental property. JT testified that the guest apologized to the security guards.

The Tenants denied that they had up to 10 guests at the rental unit. The Tenants denied that the Tenants had dogs that barked inside the rental unit. The Tenants testified that the probation issues have been dealt with and that they have worked out some of the complaints with the other tenant.

The Tenants called a neighbour, PS, to testify as a witness. PS confirmed she also lives on the rental property and is a dog owner. PS testified there is a dog from across the rental unit that barks. PS testified her own dog is very friendly and doesn't bark at other dogs. PS testified she has seen the Tenants have at most 4 or 5 people inside the rental unit and 5 or 6 people outside the rental unit, including the Tenants themselves and PS.

In reply, MM denied that the guest had apologized to the security guards for the July 27, 2022 incident. MM testified she was told by another staff that the guest said he had apologized to MM and was allowed back on the rental property. MM testified this was not true.

MM testified that the tenant who had complained about the Tenants was still moving.

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 to prove their case is on the person making the claim.

1. Is the Landlord entitled to end the tenancy early and an Order of Possession?

In this case, the Landlord bears the onus of proving that this tenancy should be ended early and an Order of Possession be granted.

Section 56 of the Act states as follows:

Application for order ending tenancy early

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.

Residential Tenancy Policy Guideline 51. Expedited Hearings states:

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).

Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

Based on the evidence before me regarding the guest involved in the July 26 and 27, 2022 incidents, I do not find the Landlord to have established cause under any of subsections 56(2)(a)(i) to (v) of the Act. I accept JT's testimony that the guest had a pellet gun, not an illegal firearm. I note the Landlord did not provide, for example, any video or audio recordings from July 26 or 27, 2022, any written statements or verbal testimony from the security guards involved, or a copy of the incident logs prepared by the Landlord's employees. In the absence of such evidence, I am unable to conclude on a balance of probabilities that the Tenants' guest committed a serious breach on July 26 or 27, 2022 warranting the Tenants' eviction.

In addition, I am not satisfied that the Landlord can rely on incidents from April 2022 and earlier in order to end this tenancy on an expedited basis. I find that since the Landlord did not make expedited applications for those incidents in a timely manner, the Landlord has not established that the requirement in section 56(2)(b) of the Act has been met—namely that “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”.

In my view, the incidents from April 2022 and earlier are more appropriately the subject matter of a one month notice to end tenancy for cause under section 47. At this time, I do not make any findings on the merits as to whether those incidents are sufficient for the Landlord to establish cause under section 47 of the Act.

Thus, while the Landlord might have cause to issue a one month notice to end tenancy in the circumstances, I find the Landlord has provided insufficient evidence to demonstrate that this tenancy should be ended early under section 56 of the Act.

Accordingly, I dismiss the Landlord's claim for an early end to the tenancy and an Order of Possession without leave to re-apply.

2. Is the Landlord entitled to recovery of the filing fee?

The Landlord has not been successful in this application. I decline to award the Landlord recovery of the filing fee under section 72 of the Act.

Conclusion

The Landlord's application is dismissed without leave to re-apply. This tenancy shall continue until ended in accordance with the Act.

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: August 17, 2022

Residential Tenancy Branch