



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

On January 9, 2023, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an early end of tenancy and an order of possession for the rental unit.

The matter was set for a conference call hearing. The Landlord and attended the hearing; however, the Tenants did not. The Landlord was assisted by her agent/son and the president of the strata council.

The Landlord testified that the Tenants signed documents agreeing that tenancy matters may be served to them via email. The Landlord provide a copy of the RTB-51 Address for Service documents signed on October 5, 2022, by the Tenants. The Landlord testified hat she served each Tenant with the Notice of Dispute Resolution Proceeding by email sent to each of them on January 10, 2023 @3:44 pm. The Landlord provided a copy of the emails sent to the Tenants on January 10, 2023. The email addresses contained in the Landlord’s email are the same as provided by the Tenants in the RTB-51 forms.

I find that the Tenants were sufficiently served with notice of the hearing and failed to attend. The hearing proceeded.

At the start of the hearing I introduced myself. The hearing process was explained. The Landlord was provided an opportunity to ask questions about the hearing process and an opportunity to present affirmed oral testimony and to make submissions during the hearing. The Landlord confirmed that her documentary evidence was served to the Tenants on January 10, 2023.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Background

The Landlord testified that the tenancy began on March 1, 2022, as a one year fixed term tenancy. The Landlord testified that rent in the amount of \$1,200.00 is due by the first day of each month. The Landlord testified that the Tenant paid the Landlord a security deposit of \$600.00. The rental unit is a condominium in a multi-unit building with strata rules and a strata council.

On January 9, 2023, the Landlord applied for dispute resolution seeking an early end to the tenancy and an immediate order of possession for the rental unit.

The Landlord provided testimony that the Tenants have caused noise disturbances affecting other occupants of the residential property; water egress issues affecting the unit below; and are responsible for leaving the entrance unsecured by taping the lock open and or propping the main door open.

The Landlord testified that the Tenant received numerous Bylaw Violation Complaint notices ("the Violation Notices") from the property strata council. The Landlord provided copies of the Violation Notices with dates ranging from October 2, 2022 to January 22, 2023. The Violation Notices provide that the Tenants are entitled to respond to the complaints by requesting a hearing within 14 days of receipt of a violation notice. I note that four of the nine violation notices provided are within the 14 day period where the Tenant may request a hearing. The Strata president Ms. L.K. stated that there are 7 Violation Notices that are still within the dispute period.

The Landlord also provided Bylaw Violation Decision Notices where the Tenants were assessed a fine. The Tenants were assessed fines totaling \$1,400.00 related to building security incidents over a five-day period from August 12, 2022 to August 16, 2022. The Tenants were assessed a \$600.00 fine related to a December 2, 2022, Notice for excessive noise and water egress. The Tenants were fined \$200.00 for an excessive noise complaint reported on November 12, 2022.

The Landlord testified that the Tenants are responsible for water egress affecting a unit below them. The Landlord stated that she has had to pay for repairs due to water egress/ flooding and she does not have insurance. She stated that there was a

blockage in one toilet. She stated that a plumber said the bathroom is good so obviously the Tenants are responsible. The Landlord testified that there have been water leaks on seven occasions.

The Landlord provided a copy of a plumbing invoice dated January 24, 2023 indicating that the overflow in the bathtub was installed incorrectly and was repaired. A plumbing invoice dated August 26, 2022 indicates that something was stuck in the toilet causing it to overflow.

Ms. L.K. testified that the flooding keeps happening and there is a concern about potential mold issues.

The Landlord stated that the Tenants have been noisy and have disturbed another resident living at the residential property. The Landlord testified that she became aware of the noise complaint on July 31, 2022. The Landlord stated that she again became aware of noise complaints on November 12, 2022, and December 1, 2022.

The Landlord had a witness present who lives directly below the Tenants. Mr. B.Y. testified that since May 2022 he has been disturbed by the Tenants. He stated that the Tenants are waking him up on a regular basis and stated that the main problem is that they are walking around, and the floorboards make a creaking noise. He stated that the building is wood frame and is approximately 40 years old. Mr. B.Y provided a ledger where he recorded the dates of the disturbances.

Mr. B.Y. also testified that there have been 7 incidents of water entering his unit from above since August 2022. He stated that there was a bathtub overflow on January 9, 2023, and smaller leaks due to toilet overflows.

Ms. L.K. stated that the Tenants have accepted responsibility for the floods as they had a guest over who overflowed the tub and or toilet. She stated that there are two toilets in the unit and one toilet was replaced in September 2022.

The Landlord was asked if she took any action regarding the door security issues from August 2022 or noise complaints by cautioning the Tenants or by issuing a warning letter. The Landlord stated that she did not take any action because she does not have experience and did not know what to do. She later testified that she did not want to make enemies of the Tenants.

At the start of the hearing the Landlord stated that she has not issued a One Month Notice to End Tenancy for Cause to the Tenants. During the hearing she testified that she has issued a Two Month Notice to End Tenancy for Landlord's Use of Property dated December 13, 2022. She stated that the Tenants did not dispute the Two Month Notice.

Upon checking the RTB case management system, I note that on January 4, 2023, the Landlord applied for dispute resolution seeking an order of possession for the rental unit based on the undisputed Two Month Notice. On January 9, 2023, the Landlord was provided with the Notice of Dispute Resolution proceeding to serve to the Tenants for a hearing scheduled for May 2, 2023. That same day, on January 9, 2023, the Landlord applied for an early end of tenancy hearing.

Section 56 of the *Act* states that a Landlord may make an application for dispute resolution to request an order to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 and granting the Landlord an order of possession in respect of the rental unit. If an order is made under this section, it is unnecessary for the Landlord to give the Tenant a notice to end the tenancy.

Under section 56 of the *Act*, the director may end a tenancy and issue an order of possession only if satisfied, in the case of a Landlord's application, 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;
- 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,
- 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
- 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 or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 to take effect.** [my emphasis]

Analysis

Residential Tenancy Branch Policy Guideline #51 Expedited Hearings provides the following information:

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. 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.

Based on the testimony and documentary evidence before me I make the following findings:

An application for an early end of tenancy is such that a landlord does not have to follow the due process of ending a tenancy in 30 days by issuing a notice to end tenancy under section 47 giving a tenant the right to dispute the Notice by applying for dispute resolution.

I find that the Landlord was aware of noise complaint issues since July 2022 and building security issues since August 2022. The Landlord asked the Tenants if they are disputing the allegations but apparently took no further action as she did not want to make an enemy. Despite further reports of noise disturbances and water egress issues the Landlord did not take steps such as issuing a notice to end tenancy for cause. In mid-December 2022 the Landlord decided to end the tenancy with a Two Month Notice to End Tenancy for Landlord's Use of Property. Based on the Landlord's inaction related to the Tenants behavior, it appears that the Landlord was not considering the Tenants' behavior to be very serious, but she now wants to end the tenancy early based on the same information.

I have considered the testimony regarding noise complaints and the water egress. The occupancy below the Tenants reported that the main problem is the creaking

floorboards. I find that there is insufficient evidence to establish that the Tenants are intentionally making noise to disturb the occupant below. There is nothing preventing the Tenants from walking around their unit whenever they wish. The noise from walking or moving about the unit is likely partially attributed to the age of the building and the creaking floors. I do not find this a sufficient reason to end a tenancy with no notice.

With regard to the flooding. The plumbers invoice indicates there was a blockage and a bathtub drain was installed upside down. While I find that the Tenants are likely responsible for the flooding, I find that there is insufficient evidence that the Tenants are intentionally causing the flooding with the intent to damage the Landlord's property or strata property.

I find that it would not 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. The Landlord had numerous opportunities to issue a One Month Notice but did not do so.

The Landlord's application for an early end of tenancy and an immediate order of possession for the rental unit is dismissed.

Conclusion

The Landlord was aware of issues and did not take any action to effectively deal with concerns regarding the Tenants prior to applying for an early end of tenancy.

I find that it would not be unreasonable, or unfair to the Landlord or other occupants of the residential property, to wait for for a notice to end the tenancy under section 47 to take effect.

The Landlord's application for an early end of tenancy and an order of possession for the rental unit is dismissed.

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: February 1, 2023