Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FF

Preliminary Issues

There were three people in attendance at the hearing representing the Tenants, J.H., J.B. and their witness M.B. They called into the teleconference hearing together and had their telephone on speaker phone. J.B. identified herself as “Advocate” for Tenant A.H., and stated she was speaking on his behalf because A.H. was too “stressed out” to deal with this matter. As per J.B.’s explanation I find she attended the hearing as Agent for A.H. and not his Advocate.

The *Residential Tenancy Policy Guideline # 26* defines an advocate as a person who advises a landlord or tenant attends a hearing with them and assists that party in presenting his or her case. Generally, an advocate is not named as a party to the hearing, and an order is not made against the advocate.

The *Residential Tenancy Policy Guideline # 26* defines an Agent as someone who acts on behalf of a landlord or tenant, speaks on behalf of, and often appears on behalf of the party. An agent may also be a person who has acted for a party during the course of a tenancy, such as a property manager who acts on behalf of a landlord, and as such may have evidence to present at the hearing. A tenant may appoint any trusted person as their agent. Where a party

Based on the foregoing I find J.B. was acting as agent for the Tenant, A.H. and not an advocate. Therefore, J.B. will hereinafter be referred to as Agent.

During the course of this proceeding the Agent confirmed that she was the mother of N.F., an occupant of this rental property with whom the Landlords allegedly completed an Intent to Rent Form with, at the beginning of September 2014, to have rent paid by to the Landlords from Income Assistance.

The Agent and J.H. both testified that A.H.’s legal name was A.H. and A.A. was not his name. During the course of this proceeding J.H. stated that an application for Dispute

Resolution had been filed by the Tenant A.H. and when I asked which name it was filed under she replied “A.A.” I asked why he would file an application with the name A.A. if his name was J.H.; to which J.H. replied saying his name was J.H. and that she had simply made a mistake.

The Landlords testified that the rental unit had previously been occupied by the Tenant, A.H. and his father and his sister. They submitted that all three tenants were listed on the tenancy agreement with the surname of A…., which is the same surname that A.H. is also known as. Based on the submissions of the Landlords I find that A.H. was properly identified on this application for Dispute Resolution as A.H. a.k.a. A.A. which is how his name will be displayed in the style of cause. For the remainder of this decision A.H. a.k.a. A.A. will be referred to as A.H.

At the outset of this proceeding the Tenants’ witness stated that he was at this proceeding to provide testimony about the events surrounding the payment or non-payment of rent. I explained to the parties that the witness needed to leave the room and if I determined his testimony would be relevant to the matters currently before me, I would call him back into the room at that time. The Tenants’ witness was not called to provide testimony during this hearing, as the matters pertaining to the payment or non-payment of rent were not at issue.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on September 5, 2014, by the Landlords to end the tenancy early and obtain an Order of Possession.

The hearing was conducted via teleconference and was attended by the Landlords, the Tenant J.H. and the Agent for A.H. Each person provided affirmed testimony.

The parties confirmed receipt of evidence served by the Landlords. I note that initially the Tenant submitted that they had not received copies of all of the documents the Landlords had submitted to the Residential Tenancy Branch (RTB). However, during the course of the hearing the Tenant made reference to all the relevant documents which are referenced in this decision. Accordingly, I find the Tenants were sufficiently served copies of the Landlords’ evidence, as affirmed by the Landlords.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlords be granted an end of tenancy and an Order of Possession?

Background and Evidence

The Landlords provided oral testimony which summarized their written submission and documentary evidence which included, among other things, copies of: an email from the RCMP listing police file numbers and dates that the police attended the rental unit in 2014; a 1 Month Notice to end tenancy that was issued to the Tenants on August 22, 2014; a Mutual Agreement to End Tenancy form signed by both parties on August 28, 2014 to end the tenancy effective August 31, 2014; and a document titled "Problem Residence Notification Information for Property Owners" that was served upon the Landlords by the RCMP on August 21, 2014.

The Landlord testified that the rental property consists of an upper and lower duplex. The rental unit had previously been occupied by A.H., his father and his sister from November 21, 2011 onward. When the father and sister passed away, A.H. remained in possession of the rental unit and never vacated. J.H. became a tenant and was listed with A.H. as Tenants on the written tenancy agreement for the lower 3 bedroom duplex which became effective May 1, 2014 for a month to month tenancy. A third occupant, N.F. moved into the rental unit sometime in early 2014. The Tenants were required to pay rent of $1,035.00 on the first of each month and a security deposit was transferred from the previous tenancy with A.H., his sister and father as tenants, as noted on the tenancy agreement.

The Landlords' oral submission provided that they are seeking an early end of tenancy because the Tenants are allegedly involved in illegal activities at the rental property; there is a constant attendance of people at the rental unit; numerous RCMP and By-law attendances for continued violations; the Tenants have caused damage to the rental unit; and are continuously disturbing the upstairs tenants and neighbors.

The Landlords provided testimony about specific events that occurred when they had received complaints from the municipal By-law officers about the Tenants and their guests parking vehicles and motorhomes on the Regional District property. The Landlords argued that despite them paying $800.00 to have a berm installed, clearly marking the rental property with stakes, and providing everyone with maps of the property, the Tenants are still allowing vehicles to be parked on the Regional District property, as recent as the day before this hearing. .

The Landlords stated that on August 21, 2014 the RCMP served the Landlords with a document titled “Problem Residence Notification” and on September 6, 2014 they were provided a list of each file number and date that the RCMP were called to attend the rental unit between January 9, 2014 and September 5, 2014. The Landlords argued that they have received numerous complaints that the Tenants and their guests are a danger to the community. Their evidence indicated that the Landlords attempted to acquire specific information about the police files but were advised that information request needed to go through a Freedom of Information request.

The Landlords read into evidence a complaint letter that had been written by a neighboring strata complex that indicated the Tenants, and or their guests, have been seen racing their cars down the street, playing foul offense music, giving them obscene questers, and being woken up by loud parties or domestic disputes. The letter suggested that the neighborhood was so bad that property values have been affected and people are selling their homes to get away from these Tenants.

The Landlords submitted evidence of a Mutual Agreement to End Tenancy which the Tenant J.H. signed on August 28, 2014. They said they discussed the situation with J.H. and agreed to come to the rental unit a few days later to assist the Tenants in cleaning up the property and with packing their belongings. The Landlords stated that in their discussions with the RCMP they were advised to have the RCMP attend the rental unit with them. So on September 5, 2014, they attended the rental property to begin assisting the Tenants with cleaning up the yard and to help them pack. However, when they arrived with the RCMP there were about 5 vehicles blocking their access and about 6 or 7 people standing outside refusing the Landlords access to the property.

The Landlords stated that they had recently heard from another tenant that there were noises coming from the rental unit that sounded like a “wrecking party”. They noted that the last time they were inside the unit they saw damages to the floor and several holes in the walls. They are now concerned that things have escalated to the point that additional damages will be caused. They said the Tenants have now refused them access to the property, so given the recent complaints they are concerned that the upper tenants, the neighbors, and their property are at risk. Also, there is outstanding rent owed for September and October 2014, so they need this matter to be resolved as soon as possible.

The Agent testified and argued that the police attended the rental unit several times this past year for curfew checks on N.F. and not for disturbances or other issues. She confirmed that N.F. was her son and argued that he was on house arrest which required the RCMP to ensure he complied with his curfew.

The Agent stated that she was present on September 5, 2014 when the Landlords attend with the police. She submitted that the Landlords were refused access on that day because the Landlords were threatening to throw out the Tenants’ possessions and remove them from the home without going through the proper channels.

J.H. testified and confirmed there had been past issues with vehicles and motorhomes parked on Regional District property. She submitted that they had guests visiting the rental unit for a short period of time and it was their guests' vehicles that needed to be moved. J.H. argued that once she was notified of the problem she made arrangements to have the vehicles towed, as some of them were not in working condition. J.H. confirmed that she had received a text from the Landlords yesterday advising that there was another vehicle parked on the Regional District property. She noted that she was away from the rental property temporarily so was making arrangements to have that vehicle towed.

J.H. submitted that the list of dates that the RCMP indicated they were in attendance at the rental unit was, as previous stated by the Agent, to conduct a curfew check. She later changed her testimony to include a couple of different occurrences that the police attended after A.H. had domestic disputes with his girlfriend.

J.H. began to speak about the 1 Month Notice to End Tenancy. During J.H.'s testimony, she began stalling and speaking in a manner that was evident she was being led by someone else. I instructed the Agent to leave the room and I instructed J.H. to move a location where she was by herself and where no one else could hear her. Shortly afterwards the Agent began speaking and it was obvious she was still in the same room and/or listening to J.H.'s testimony, despite my orders to leave and not listen. J.H. did not provide consistent testimony about the 1 Month Notice, other than to say that the Landlords attended the rental unit and gave them the 1 Month Notice sometime around August 22, 2014.

It was at this point in the hearing that J.H. stated that she is regularly absent from the rental property and therefore she could not speak to what has recently occurred. She could not give exact dates of when she left the rental unit and could not provide exact testimony of how often she had been away.

The Landlords confirmed that they had knowledge that J.H. was often away and the Agent is regularly at the rental unit. The Landlords argued that the Tenants have displayed a complete disregard to bylaws, the upper tenants, the neighbourhood, and have everyone living in fear of them. The Landlords stated that this situation cannot be allowed to continue as they will suffer more damages and the neighbourhood and upper tenants will continue to be a risk. The Landlords argued that they have been following the guidance from the RCMP and the By-law officers and the relationship has deteriorated to the point that the entire neighbourhood is being held in fear. They stated that they need to obtain an "enforceable Order of Possession" as soon as possible.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The *Residential Tenancy Policy Guideline # 13* defines co-tenants as two or more tenants who rent the same property under the same tenancy agreement. Co-tenants have equal rights under the tenancy and are jointly and severally responsible for any debts or damages relating to the tenancy. If one tenant gives notice to move out or enters into a mutual agreement to end the tenancy, the tenancy will end on the effective date of that notice or agreement and all tenants must vacate.

As listed above, this hearing pertained to a written tenancy that was entered into by co-tenants who are the named respondents to this dispute. The hearing was attended by both Landlords the Tenant J.H. and an Agent for A.H.

Based on the above, I find each party was well represented at this proceeding.

Section 56 of the *Act* allows a tenancy to be ended early without waiting for the effective date of a one month Notice to End Tenancy if there is evidence that the tenants have breached their obligations under the tenancy agreement or *Act* and it would be unreasonable or unfair to wait for the effective date of a one month Notice to End Tenancy.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find that the Tenants have significantly breached sections 28 and 29 of the *Act* by negatively affecting the quiet enjoyment of the upper tenants with the sounds of their domestic disputes, parties, allowing their visitors to break bylaws, been involved in activities causing numerous police attendances, and currently have everyone in the neighbourhood living in fear.

I do not accept the Tenant and Agent's submissions that the police attendances were nothing more than curfew checks; rather, I accept the Landlords' assertion that they would not be receiving constant complaints and would not have been served notice from the police that their house was designated a "Problem Residence" if there was nothing happening or if the RCMP were just conducting curfew checks.

Next, I have considered whether it would be unreasonable or unfair to the Landlords to wait for a one month Notice to End Tenancy to take effect. Or in this case wait for the October 30, 2014, hearing to hear the Tenants' application to dispute the 1 Month Notice that was served to them on August 22, 2014.

When I considered the totality of the events, I accept the Landlords' submissions that the Tenants' behaviour may be escalating to the point that they are causing more damage to the property. I further accept that the Tenants and or their guest's behavior have and continue to put the neighbours and upper tenants at significant risk. I also accept that the landlord-tenant relationship has become acrimonious with the Tenants becoming confrontational and refusing the Landlords access to the rental property. Based on these conclusions I find it would be unreasonable to wait until the October 30, 2014 hearing to hear the dispute to cancel the 1 month Notice to End Tenancy. This

relationship has deteriorated with the possibility of it escalating which may cause the Landlords, the upper tenants and the neighbors to suffer further loss or damage. Therefore, I grant the Landlords' application to end this tenancy early.

Conclusion

The Landlords have been granted an Order of Possession effective **Two (2) Days after service upon the Tenants.** In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that 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 *Residential Tenancy Act*.

Dated: October 09, 2014

Residential Tenancy Branch