



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an early end to tenancy and Order of Possession. The landlord also seeks to recover the filing fee for this proceeding from the tenant.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Residential Tenancy Act (Act)*; served in person on June 03, 2015 with a witness.

The landlord, an agent for the landlord and three witnesses for the landlord appeared. The landlord gave sworn testimony and was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the landlord entitled to end the tenancy early and gain an Order of Possession on the basis of their application to end the tenancy early pursuant to section 56 of the *Act*?

Background and Evidence

The landlord testified that this fixed term tenancy started on December 01, 2014. Rent for this unit is \$1,200.00 per month and is due on the first day of each month in advance.

The landlord testified that the tenants have caused disturbances to their neighbouring tenants. The female tenant jumped across from her balcony to the balcony next door which startled the tenants residing in that unit. The landlord testified that the tenant had said she had jumped because she was being assaulted by the male tenant; however, the landlord stated the tenants may have been trying to break and entry into the neighbouring unit. That tenant called the police but the landlord is unsure if charges were laid against either of the tenants. The landlord testified that this action from the tenant has endangered the tenant, the building and other occupants of the building. The strata council have fined the landlord \$200.00. A copy of that letter from the strata has been provided in documentary evidence.

The landlord testified there have been incidents with the tenants breaking into the mailboxes in the building. The security footage shows someone breaking into the mailboxes. The Police were called but they could not determine who it was on the security footage as it was very grainy. No charges were laid against the tenants. The landlord testified that the key fobs register who is coming into the building and the security cameras in the lobby know who is going into the area. From this information the landlord suspects it was the tenants who have been breaking into the mail boxes. The landlord testified that he has had some mail going to the rental unit, one of which was a cheque and this went missing and was later cashed. The landlord is waiting for information to determine who cashed his cheque.

The landlord testified that there have been complaints about excessive noise from the tenants' unit along with loud music, arguing and yelling. The male tenant has been seen on the security footage in the lobby late at night with other people. The landlord suspects their maybe some drug involvement. The security footage also showed the male tenant in the lobby arguing with a female and taking her food and drink and throwing it down.

The landlord calls his first witness RS who is the chairman of the strata council. The witness was asked questions by the landlord and responded that he has heard of numerous noise complaints concerning these tenants and excessive arguments from their unit. RS testified that he heard about the female tenant jumping from her balcony to the neighbour's balcony and he was notified of this event after the fact. RS testified that the landlord has been fined \$200.00 because of these tenants' actions and he has been to the unit four times. The first time he went to the unit to speak to the tenants about noise the male tenant was very polite and was sorry

about playing music so loud. After that the male tenant became more aggressive. RS testified he accompanied the landlord to the unit and the landlord tested his key which would not work. The tenant came to the door and said the landlord must have bought the wrong key. Later the tenant admitted he had changed the locks.

RS testified that another tenant had complained to him about noise from this unit at midnight when the tenants were playing their music loud. RS testified that the security footage showing someone breaking into the mail boxes is not clear. RS testified that he is not sure if the building fobs are time linked to show who is coming into the building and at what time. RS described an incident shown on the security footage showing the male tenant meeting a woman in the lobby at either 2.00 a.m. or 4.00 a.m. They had a big argument and the male tenant throw her drink, burger and fries on the floor. The male tenant did return later to pick up the cup and food but the house keeper had to come and clear up the mess.

RS testified that there have been incidents where the fire doors have been wedged open if the outside door is wedged open it will allow people from outside to entry the building. RS testified he found the outside door wedged open once. RS testified there was cat in the building but he has no idea who it belonged to. RS testified that the building is non-smoking including the balconies and patios. Occupants must be 15 feet away from the building. RS testified that he does not recall seeing a dog bed and ashtray on the tenants' balcony. RS testified that the building security man has been in a lot more since problems with these tenants started. A new camera has been installed in the mailroom and the fifth floor. RS recalls the Police coming into the building looking for both tenants but they would not tell RS why. RS did allow them to look at the security footage but he has not heard anything back from the police and does not recall the date they came in.

The landlord calls his second witness PP. PP is a neighbour of the tenants. The landlord asked PP questions and PP responded and testified that he has not had problems with previous tenants in this unit but the problems with these tenants started in late March when they continued to play loud music all day and all night. Sometimes this was very loud, other times not so loud. The base music made things in PP's unit vibrate it was so loud. PP testified that his wife went to ask the tenants to turn down the music. She knocked on their door, they did not answer but they did turn the music down. It was then quiet for a few days. Whenever the

tenants had a visitor the loud music would start up again. PP then reported this to the strata council. RS and another strata council member came to PP's unit and heard the noise and said it was unacceptable. They went next door and asked the tenants to turn it down. PP testified that he has made two or three complaints at least. Another time the tenants were playing loud music PP went on his balcony and asked the tenants to turn the music down which they did do. PP testified that the tenants' visitors will be on the ground and shout up to the tenants' unit on the fifth floor. The tenant then tosses something down to his visitors so they can get into the building. PP testified that he has heard the tenants fighting but that has got better recently. He did hear a lady screaming and a door slamming and the lady ran out of the unit. PP testified that he has not seen or smelt the tenants smoking cigarettes or marijuana but his neighbour has seen them. PP testified that he had heard the female tenant had climbed to another unit.

The landlord calls his third witness BT. BT is the tenant living on the other side of the tenants' unit. BT testified that he has heard these tenants fighting at two and three in the morning. The female tenant jumped onto his balcony and the police were called. PT testified his wife and children were home at that time and his children were afraid. BT testified that he does not know if the police pressed charges. BT testified that he does not know what would have happened if his wife was not at home. BT testified that the noise from the tenants fighting has been excessive but he has not complained to the strata. BT testified that he has spoken to the landlord once or twice. BT testified that it is not loud music but just fighting. BT testified that he does smoke on his balcony and has smelt other smoke and marijuana but he does not know where it comes from. The tenants also brought a cat and a dog but he does not know if they are theirs. BT testified that the day after the female tenant jumped on his balcony she came and said sorry.

The landlord testified that from the witness statements it shows that he needs an immediate eviction for these tenants. They have attempted to break and enter, played loud music and been heard fighting, they have been smoking and they have brought in pets and the landlord has seen a dog bed and ashtrays on their balcony. The tenants have not paid rent on time since moving in. It is clear they are an endangerment to the building and other tenants and the male tenant has changed the lock on the unit and refused entry to the landlord. The tenant has been threatening and laughed at the landlord.

The landlord seeks an Order of Possession to end the tenancy early.

Analysis

When an early end to tenancy is granted, instead of receiving a One Month Notice, which a tenant would receive when being evicted for cause, the tenant receives virtually no notice. An early end to tenancy is an extreme remedy under the *Act*, when there are provisions in the *Act* providing the landlord with opportunity to evict the tenant for cause and providing the tenant with a specific notice period.

Under S. 56(2) (b) of the *Act*, in order to establish a claim for an early end to tenancy, the landlord must establish 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 Tenancy under s. 47 of the *Act* to take effect (my emphasis).

The landlord has the burden of proof to show that the tenants have acted in a manner which would give rise to the extraordinary measure of issuing an Order of Possession to the landlord to end the tenancy early. The landlord has provided evidence in the form of excessive noise letter which also documents the incident with the female tenant jumping onto a neighbor's balcony dated May 18, 2015. The landlord's witnesses have provided testimony concerning loud noise and an incident when the female tenant jumped on their balcony; however, the landlord has also complained about things the tenants have done which could be dealt with under either a 10 Day Notice to End Tenancy for unpaid rent and a One Month Notice to End Tenancy for cause. I am not satisfied that these incidents described above standing alone or collectively are significant enough to warrant an early end to tenancy. The female tenant may have jumped from her balcony to the neighbors but there is insufficient proof to show that her intention was to break and entry or that her actions endangered the building or other occupants; there is insufficient evidence to show the tenants have broken into mailboxes in the building; or that drugs are being supplied or used on the premises. While I accept the noise may have been excessive at times from these tenants unit this can be dealt with under a One Month Notice to End Tenancy.

It is therefore my decision that the landlord has insufficient evidence to allow me to end this tenancy early and find it would not be unreasonable or unfair for the landlord to wait for a Notice to End Tenancy for cause or a 10 Day Notice to End Tenancy for unpaid rent to take effect.

Conclusion

For the above reasons I dismiss the landlord's application for an early end to tenancy. As the landlord has been unsuccessful the landlord must bear the cost of filing this application.

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: June 26, 2015

Residential Tenancy Branch

