Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET, FFL**

Introduction

This expedited hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for early termination of a tenancy pursuant to section 56;
- Authorization to recover the filing fee for this application pursuant to section 72.

All parties attended and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The advocate KI represented the tenants ("the tenants"). The landlord called TP as a witness who was affirmed and provided testimony. No issues of service were raised. I find each party served the other in accordance with the Act.

Issue(s) to be Decided

Is the landlord entitled to the following:

- An order for early termination of a tenancy pursuant to section 56;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord provided the following uncontradicted testimony. The tenancy began on December 2017. Monthly rent is $3,570.00 payable on the last day of the month. The tenants provided a security deposit of $1,800.00 which the landlord holds. The landlord

submitted a copy of the signed tenancy agreement.

The unit is in a residential building. The tenants and two children live upstairs. The witness TP, his wife and two children live downstairs.

This is the second recent arbitration concerning this tenancy. The number of the first arbitration is referenced on the first page. The previous Decision is dated April 29, 2020 and includes terms of a settlement reached between the parties; a term is that the tenants would vacate the unit on June 30, 2020.

Following this Decision, the landlord brought a second application on May 5, 2020 in support of which she filed many audio/video files and substantial documentation. The landlord called the TP, the occupant of the downstairs unit, as a witness.

This application is for an early end of the tenancy; the landlord requested that the tenancy end immediately on an emergency basis because of actions of the tenants following the previous Decision.

During the hearing, both parties provided an account of their relationship and events which led up to this application. They both agreed that their relationship became acrimonious soon after the tenancy began. The primary contentious issue was the noise allegedly caused by the tenants which caused severe distress, including medical effects, on the downstairs occupants who were represented by the witness TP.

The tenants referred to the building as a “horror house”; they deny any responsibility for the noise and claim that the complaints by TP and the landlord are exaggerated, false and undeserved.

During the 86-minute hearing, each party and the witness referred to past events, earlier correspondence, and previous statements as evidence of the other’s bad faith and poor behaviour. The landlord and the witness TP conveyed deep resentments against the tenants because of their alleged indifference to the effects of the noise they caused to TP and his family. The tenants expressed outrage and indignation of the false accusations of noise.

The tenant AH interrupted the hearing several times in order to provide “proof” that the landlord and witness TP were wrong or fabricating events; the Arbitrator cautioned the tenant AH about interrupting and referencing irrelevant past events and circumstances, such as the comparative religious adherence of the tenants and TP’s family.

The witness TP and his family moved in to their residence about two years before the tenants moved in upstairs. The landlord lived upstairs. TP testified that one of his children has a medically diagnosed condition of hyper sensitivity to sensory stimuli ("the child") such as noise; medical reports were filed confirming this condition. The landlord, TP and his family had a harmonious relationship and there were no noise issues, despite the landlord having a son and "three large dogs".

When the landlord moved out of the upstairs suite, TP encouraged the tenants, then friends, to move in. The tenants were aware of TP's child's medical condition and the effect of noise on the child.

TP provided affirmed testimony which is summarized as follows:

1. Shortly after the tenants moved in upstairs, TP noticed unsettling noise which could be heard in their apartment from the tenants' unit and was causing serious disturbance to the child.
2. TP brought the issue to the attention of the tenants who said they would keep the noise down.
3. The noise from the tenants' unit escalated despite repeated communication from both TP and the landlord; TP believed the noise was deliberate, planned and intentional.
4. Over time, both TP and the child sought emergency and ongoing medical care to deal with the ongoing stress and health repercussions of the volume and frequency of the noise caused by the tenants; the landlord submitted medical reports to support the recounting of the suffering and impacts TP and his family experienced.
5. The landlord cautioned the tenants about the noise many times to no avail. Accordingly, the landlord issued a One Month Notice to End Tenancy for Cause which resulted in the previous Decision.
6. TP testified the child's medical condition is deteriorating since the previous Decision as a result of the callous indifference of the tenants to the effect of the noise on the child.
7. TP was upset by the previous Decision and believed the Decision/settlement did not reflect the gravity of the situation, the suffering which his family was experiencing, the dire medical consequences on TP and the child, and the impossibility of continuing any longer with the tenants living upstairs.
8. The noise from the tenants increased after the Decision and appeared progressively deliberate and mean-spirited; this included yelling, thumping, pounding, screaming and children playing games such as soccer. Often, the noise would continue until late evening, making it difficult of impossible for the child to sleep.

9. The landlord believed that the escalating noise after the previous Decision warranted an expedited application for an emergency order for an early end of the tenancy.

The tenants acknowledged they knew about the child's medical condition before they moved int. However, they denied most of the evidence from the landlord and the tenant TP.

The tenants testified that they did everything possible to reduce the noise from their unit, such as by taking their shoes off, speaking quietly, admonishing the children to play silently, placing padding under the chair legs, and so on. They asserted that the problem was *not* noise emanating from their family, but the construction of their floor (the downstairs' tenants' ceiling). The tenants asserted the building was old, there was no sound insulation, and even the slightest noise could be heard downstairs. The landlord's and TP's complaints were spurious and "inflated".

In reply, the landlord and TP pointed out that there were no noise complaints from TP when she, the landlord, lived upstairs with her family and pets.

The tenants further asserted that the landlord and TP were in a "plot" to get them out and claimed harassment and discrimination. The tenants surmised that the landlord and TP were working together to evict the tenants as the landlord wanted to move back in to the unit; this way, the landlord would not have to pay compensation due to the tenants' if a Two Month Notice to End Tenancy for Landlord's Use was issued. The landlord and TP denied these allegations as preposterous.

As well, the tenants stated that the period of the most complaints from the landlord coincided with the BC State of Emergency. Two adults and two children rarely left the unit, causing more noise than normal, but understandable in the circumstances.

The tenants stated that they may not move if the State of Emergency is not lifted; they did not have confirmed plans to leave the unit at the end of June 2020 as set out in the previous Decision.

The landlord and TP requested an immediate end to the tenancy and an order of possession. They requested "an end to this nightmare".

Analysis

The parties submitted considerable documentary and audio/video evidence in a hearing that lasted 86 minutes.

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

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. In this case, the onus is on the landlord.

Section 56(1) of the Act permits a landlord to make an application for dispute resolution to request an order (a) ending a tenancy on a date that is earlier than the tenancy would end of notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit. The section states:

> ***Application for order ending tenancy early***
>
> ***56*** *(1) A landlord may make an application for dispute resolution to request an order*
>
> > *(a) 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) granting the landlord an order of possession in respect of the rental unit.*

Policy Guideline 51 – Expedited Hearings provides guidance on applications of this nature.

To grant an order under section 56(1), I must be satisfied as follows:

> *56 (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.

(emphasis added in bold)

The landlord relied on sections (a)(i) and (ii). That is, the tenants had:

*(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;*

In this case, I accept the landlord's testimony, supported by the witness TP and many submitted documents, that the tenancy has been increasingly difficult and has become unbearable for both sets of tenants. I find the landlord has met the burden of proof with respect to these sections.

However, this is a *two*-part test and the landlord must prove *both* parts.

As discussed, the parties attended an arbitration and reached a final settlement reflected in a previous Decision and an Order of Possession effective June 30, 2020.

Given the history between the parties, I find the landlord wanted to end the tenancy and did not want to wait until June 30, 2020, even though it is less than five weeks away and the landlord agreed to that date for vacancy. I acknowledge the landlord's and TP's concern that the State of Emergency may extend beyond the end of June 2020 and the tenants may not vacate at that time.

I find the landlord has failed to meet the burden of proof with respect to the second part of the test, as follows:

> *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.*

I find the landlord has failed to establish that it is unreasonable or unfair to wait for the existing Order of Possession effective June 30, 2020 to take effect.

Taking into consideration all the oral testimony and documentary evidence presented, I find on a balance of probabilities that the landlord has not met the onus of proving their claim for an order under section 56 of the Act. As such, I dismiss the landlord's application without leave to reapply.

Conclusion

The landlord's application is dismissed without leave to reapply.

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: May 21, 2020

Residential Tenancy Branch