Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MARTIN MANOR APTS. HOLDINGS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

In this dispute, the landlord seeks an order ending a tenancy, and an order of possession, pursuant to section 56(1) of the *Residential Tenancy Act* (the "Act"). The landlord also seeks recovery of the filing fee under section 72 of the Act.

The landlord filed an application for dispute resolution on July 8, 2020 and a dispute resolution hearing was held, by teleconference, on August 14, 2020. The landlord's agent (hereafter the "landlord") and two witnesses attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. The tenant did not attend.

The landlord testified that they served the Notice of Dispute Resolution Proceeding on the tenant by way of Canada Post registered mail on July 9, 2020. In addition, they served the evidence package, in-person, on the tenant on July 13, 2020 at 1:05 PM. Based on this undisputed evidence I find that the tenant was served in accordance with the Act and the *Rules of Procedure.*

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Is the landlord entitled to an order under section 56(1) of the Act?

2. Is the landlord entitled to recovery of the filing fee under section 72 of the Act?

Background and Evidence

This tenancy began on February 1, 2020 and monthly rent is $1,250.00. The tenant paid a security deposit of $625.00. A copy of the written tenancy agreement was submitted into evidence.

The landlord brings this application due to the tenant's ongoing behavior including, but not limited to, causing excessive noise disturbances throughout the night, throwing rocks at construction workers across the street (which have lead to several other occupants becoming fearful of their safety), and, last but not least, the giving of several highly inappropriate and sexually lewd notes to another two occupants of the residential property. The police have attended on several occasions between when the tenant moved in until present. Copies of police reports were submitted into evidence.

Copies of email complaints from several occupants were submitted into evidence, and which corroborated the landlord's testimony in regard to the noise issues. In addition, photographs of four notes (the ones that the tenant was observed slipping under his neighbour's door) that the tenant sent to two of his neighbours were submitted into evidence. The notes contain language that is highly vulgar, and essentially solicited the female occupants with sexual activities. The recipients of these notes testified at the hearing that they received these notes on July 3 and 4, 2020, and at the beginning and end of May 2020. In the landlord's written submissions, it is noted that the occupants are highly fearful for their safety.

The landlord has sent several warning letters to the tenant in regard to his behavior, copies of which were tendered into evidence. The warning letters have had no effect.

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.

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 if 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.

In order for me to grant an order under section 56(1), I must be satisfied that

(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.

In this case, I start by noting that section 56(1)(b) was rendered inoperable by virtue of the government's moratorium on all notices to end tenancy, including the issuing of any notices under section 47 of the Act. This moratorium lasted almost four months, during which time the tenant continued to behave in the manner in which he did.

The facts of this case, including the ongoing noise disturbance, which I find significantly interfered with and unreasonably disturbed other occupants are such that the landlord is entitled to an order under this section. In addition, and most concerning, are the sexually lewd and threatening notes given by the tenant to the two occupants. It is clear from the written evidence and the witnesses' testimony that the tenant's behavior in giving the notes has significantly interfered with and unreasonably disturbed another occupant. It is wholly unreasonable and unfair for the other occupants and the landlord to have to wait any further for this particularly troublesome and threatening tenant to remain in the rental unit.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for an order under section 56(1) of the Act. As such, I therefore order that this tenancy is ended effective immediately and that the landlord is granted an order of possession.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." Given that the tenancy is now ended, I order that the landlord may retain $100.00 of the tenant's security deposit as recovery for the filing fee.

Conclusion

I HEREBY

1. order that the tenancy is ended effective immediately, and

2. grant the landlord an order of possession, which must be served on the tenant and is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is final and binding and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: August 14, 2020

Residential Tenancy Branch