



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

ET, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an early end of the tenancy, an Order of possession and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The Agent for the landlord provided affirmed testimony that on January 8, 2009 at approximately 2:30 p.m., she personally hand-delivered copies of the Application for Dispute Resolution and Notice of Hearing to the tenant at her rental unit door, with the resident caretaker present as a witness.

The tenant has submitted evidence for this hearing.

These documents are deemed to have been served in accordance with section 89 of the *Act*, however; the tenant did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to end this tenancy early without the requirement of a Notice to End Tenancy?

Is the landlord entitled to an Order of possession?

Is the landlord entitled to filing fee costs?

Background and Evidence

The landlord submitted copies of incident reports detailing problems that have emerged with the tenant over the past six months of this approximately three year tenancy managed by a senior's citizen society.

The landlord is seeking to end this tenancy early in relation to an incident outlined in an incident report dated December 24, 2009 which detailed an altercation that occurred between the tenant and another occupant of the building. The alleged victim and her spouse were called as witnesses, provided testimony and confirmed the details of the written incident report.

The male witness provided affirmed testimony that on December 24, 2009, his wife returned to their apartment and was in a state of shock. His wife had her glasses in her hand and stated that the tenant had approached her, asking invasive questions and that in an attempt to remove herself from the discussion, she entered the elevator. The tenant then blocked the elevator door from closing and "flailed" at his spouse, knocking the glasses off her face, causing them to break. His spouse also suffered a black eye.

The female witness provided affirmed testimony that her spouse had provided an accurate account of the incident, as she had described it on December 24, 2009. This witness stated that the tenant was hitting her and that she knocked her glasses off, breaking them. The female witness stated that she is now unable to enter the building hallways or elevator without first checking to see if her assailant is present.

An incident report dated January 4, 2010, indicates that a second occupant attempted to intervene during the assault and that she was also hit by the tenant.

The landlord testified that she has met with the female occupant who was assaulted and that on January 4, 2010, the bruising to her face remained visible.

The landlord submits that these actions and breach of the Act by the tenant are so egregious that the tenancy should be ended immediately and it would be unfair and unreasonable to wait for a one month Notice to End Tenancy to take effect.

The tenant did not attend this hearing but submitted evidence indicating that she was acting in self-defense.

Analysis

In order to establish grounds to end the tenancy early, the landlord must not only establish that she has cause to end the tenancy, but that it would be unreasonable or unfair to require the landlord to wait for a notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the testimony of the landlord and her witnesses, I find that the landlord has met that burden.

It is not for me to determine whether the actions of the tenant contravene the *Criminal Code* but to assess whether, on the balance of probabilities, this seriously jeopardized the health and safety of the other occupant of the building. I am satisfied that the tenant did accost the female occupant in the elevator and that her actions caused the occupant's glasses to break and her face to bruise.

In relation to sufficient cause, I find, in the absence of the tenant, that the landlord has presented sufficient cause to end this tenancy early. Other occupants have the right to the quiet enjoyment of their tenancy and should not be so fearful that they are afraid to be in the presence of other tenants, for fear of an altercation.

I find that in the circumstances it would be unreasonable and unfair to require the landlord to wait for a notice to end the tenancy under s. 47 and, therefore, I find that the landlord is entitled to an order for possession. A formal order has been issued and may be filed in the Supreme Court and enforced as an order of that Court.

As the landlord's Application has merit I find that the landlord is entitled to the sum of \$50 being the cost of the filing fee paid pursuant to section 72(1).

Conclusion

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution and I grant the landlord a monetary Order in that amount. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

If the landlord is retaining a security deposit the \$50.00, as provided by section 38(3) of the Act, the filing fee may be withheld from the deposit.

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: January 19, 2010.

Dispute Resolution Officer