

## **DECISION**

**Dispute Codes**      ET, FF

### **Introduction**

This hearing was convened by way of conference call to deal with the landlords' application for an Order of Possession and to recover the filing fee for the cost of this application.

At the outset of the hearing the landlords applied to amend the application by removing the third-named tenant in that he is not and never was a tenant, but remains in the rental unit as an occupant. That person attended the conference call hearing and was permitted to give affirmed testimony however he made it very clear during the hearing that he was not appearing as agent for the other tenants. The other tenants did not attend the conference call hearing despite being served with the Landlord Application for Dispute Resolution and notice of hearing documents pursuant to Section 89 of the *Residential Tenancy Act*.

All information and testimony has been reviewed and is considered in this Decision.

### **Issues(s) to be Decided**

Are the landlords entitled to an order ending the tenancy early and obtaining an Order of Possession?

### **Background and Evidence**

The landlord's agent testified that an exchange of gunfire had taken place on November 17, 2010 where the residents of the rental unit exchanged gunfire with unknown persons in a motor vehicle. He was also advised by the police to not go into the rental unit without a police officer present.

On December 1, 2010 there was a break-in at the rental unit and a suspected hostage taking. The police again attended and were able to get 2 persons to surrender from that unit. A third person had barricaded herself and the Emergency Response Team negotiated for about 2 hours before she was finally removed from the unit.

On December 2, 2010 the landlord's agent went to the apartment building where the rental unit is located and discovered that the power was out. He went to the main power unit with a police officer and the landlord and they discovered that wires were scorched. Further, the door to the power room had been kicked in and someone had tampered with the power to by-pass the meter and still retain power. Power was still available to this rental unit, but not to the entire building. They went to the rental unit, and the police knocked on the door. A man answered the door, and the landlord's agent introduced himself. The occupant refused to open the door and the police called for back-up and kicked the door open. When the occupant refused to identify himself, he was placed in handcuffs. A woman was also taken from the unit and asked to leave. She returned after the police left, and the occupant was released without charges.

The landlord, his agent and the police removed barricades, such as plywood and drywall wedged over the windows. The police ordered the occupant off the property once the landlord told the police that he was not a tenant.

The woman dropped a piece of paper which was secured by the landlord's agent. He described the writing on it as a sheet that tracks rooms used for prostitution. He further testified that advertisements had been placed on Craigslist for more women.

The landlord testified that the occupant has never had a landlord/tenant relationship with the landlord; he has not signed a tenancy agreement, he was not approved as a tenant and has not paid any rent. One of the tenants had approached the landlord stating that he wanted to move out and asked the landlord for his rent money back for the month of November, 2010. The landlord wanted him to leave, gave him \$280.00 and had the tenant sign a receipt for that money.

The landlord further testified that on November 10, 2010 he went to the building and met the occupant who told the landlord that he was a new tenant within that rental unit. He further testified that he would not take a tenant application from him.

The landlord's witness testified that he is a bi-law enforcement officer, and the City was working with Can Real, who was a receiver. The building had gone into receivership for 4 days, but is no longer in receivership. He was called to complete an occupancy survey as a result of complaints from other tenants and neighbours.

He further testified that he was with the police on October 7, 2010 when an inspection was being conducted in the building. At this particular rental unit, he noted that the door was ripped off the hinges and windows were broken. Another room-by-room inspection took place with the police and a social worker on November 29, 2010. The occupant was there. The bedroom had only dead bolt access which required a key from both sides and the occupant did not have a key so the bi-law enforcement officer could not get in to inspect. He further stated that the occupant definitely was not a tenant, which was confirmed to him by the owner. Further, the hot water baseboard heater was ripped off the wall and a wall had been erected in the kitchen without the landlord's consent to make a separate room. Also, the fire door in the common hallway had been ripped off at the hinges and the Emergency Exit sign outside this rental unit was smashed, as well as windows.

The agent also testified that rooms were cordoned off to make separate rooms to support prostitution. Heavy traffic continues in this unit, which poses a hazard to other tenants and the neighbourhood.

The occupant testified that he received a letter from Can Real, the receiver, which stated that the building was in receivership and tenants were to pay their rent to the receiver instead of the landlord.

He further stated that he was not present when the shooting took place, and some kids in the neighbourhood had lit some firecrackers, but when he arrived, the police detained him for 8 hours, questioned him and then released him.

The occupant further testified that the landlord had told him that a warrant would be served on November 29, 2010 at 1:30 p.m. and "everyone took off." The police, the bi-law enforcement officer and a social worker showed, but he did not receive 24 hours notice as required under the *Act*. The bi-law enforcement officer took pictures. The police asked the owner to attend, which he did.

On or about December 4, 2010 a bailiff attended the unit and told the occupant about an eviction. He was again put in cuffs and was told that if he went back in he'd be arrested. An eviction notice was on the floor when he did return which stated that \$1,380.00 in unpaid rent was outstanding that was due on December 1, 2010.

He further testified that he did not pay the rent, but attempted to on 3 occasions. He stated he tried to pay the rent to Can Real and to the landlord, and again after seeing the eviction notice.

At the outset of the hearing, the occupant stated that the hearing was fraudulent, the Dispute Resolution Officer was a fraud and the entire proceedings are illegal and of no effect. He was extremely disruptive throughout the hearing. When questioned about a tenancy agreement, he stated that he had one, but did not provide a copy in advance of the hearing and was not able to provide a date that the agreement was entered into.

### **Analysis**

In the circumstances, I find that the landlord has established that an early end to this tenancy is justified. *The Residential Tenancy Act* states that:

- 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.

The *Act* goes on to specify under what circumstances the director may make an order, and that the director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession. In the evidence before me, I find that the tenants or persons permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, has seriously jeopardized the health or safety or a lawful right or interest of the landlord or other occupants, has put the landlord's property at significant risk, and has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property, has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant, and has caused extraordinary damage to the residential property. I further find that 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.

Further, subsection (3) states that if an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

I further find that no tenancy agreement exists between the landlord and the occupant, and the occupant who attended the hearing is not a tenant. The style of cause is hereby amended accordingly.

## **Conclusion**

For the reasons set out above, I hereby grant an immediate Order of Possession in favour of the landlord. The tenants must be served with the Order of Possession. If the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord is also entitled to recovery of the \$50.00 filing fee, and I hereby grant a monetary order in favour of the landlord in the amount of \$50.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: December 17, 2010.

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Dispute Resolution Officer