



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: ET/OP, FF

Introduction

This hearing dealt with the landlords' application for an early end of tenancy / an order of possession, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

At the start of the hearing the tenant requested an adjournment, and he referred to his own application for dispute resolution. The hearing in response to the tenant's application is scheduled for conference call to begin at 10:00 a.m. on July 5, 2011. The tenant identified a main reason for his request being the absence of a witness who would testify to the effect that he paid all outstanding rent due for June 2011, at or around the same time when he was served with the landlords' 10 day notice to end tenancy for unpaid rent on June 3, 2011.

In view of the allegedly serious nature of events giving rise to the landlords' application for an early end of tenancy, and in light of the fact that the landlords are not seeking an order of possession on the basis of unpaid rent and, further, in consideration of what I find was the ample time available to the tenant to arrange for the participation of his witness after the landlord's application was filed on June 9, 2011, the tenant's application for adjournment is denied.

Issues to be decided

- Whether the landlords are entitled to the above under the Act

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from April 1, 2011 to April 1, 2012. Monthly rent is \$900.00. No security deposit was collected.

Arising from rent which was unpaid when due on June 1, 2011, the landlords issued a 10 day notice to end tenancy for unpaid rent dated June 3, 2011. The landlords testified that they prepared 2 notices, and that 1 of these was served in person on the tenant on June 3, 2011, while the other was served by way of posting on the tenant's door on that

same date. Later that same day, the landlords allege that the tenant physically assaulted one of the landlords, that an ambulance attended the scene, and that the landlord required medical attention including stitches to his lower lip. Accordingly, as a result of this physical assault, the landlords seek an early end of tenancy and an order of possession. The landlords note that following the assault, they requested that police be present when they later served the tenant with their application for dispute resolution and notice of hearing on June 10, 2011.

The tenant testified that after service of the 10 day notice, he made full payment of rent for June 2011. The tenant also testified that while he requested a receipt for this payment, one was not forthcoming. The landlords strenuously deny both of the tenant's claims, and state that the tenant has made no payment whatsoever toward rent for June 2011, and that he continues to reside in the unit. As for assault, the tenant claims that he was assaulted by the landlord.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenant was personally served with a 10 day notice to end tenancy for unpaid rent dated June 3, 2011. I find on a balance of probabilities that the tenant did not pay the outstanding rent within 5 days of receiving the notice. Further, I find that the tenant's application for dispute resolution, which was filed on June 13, 2011, was not filed within 5 days of his receipt of the notice on June 3, 2011. However, in this application the landlords do not seek an early end of tenancy and an order of possession on the basis of unpaid rent.

Section 56 of the Act addresses **Application for order ending tenancy early**, and provides in part 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;

(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.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant assaulted one of the landlords, and thereby “significantly interfered with or unreasonably disturbed” the landlord, and “seriously jeopardized the health or safety or lawful right or interest of the landlord.” In the result, I find that the landlords have established entitlement to an early end of tenancy and an order of possession.

As the landlords have succeeded in their application, I find that they have established entitlement to recovery of the \$50.00 filing fee. In the result, I hereby order that the landlords may withhold this amount from the tenant’s security deposit.

Conclusion

I hereby issue an order of possession in favour of the landlords effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. Should the tenant 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.

I hereby ORDER that the landlords may withhold \$50.00 from the security deposit in order to recover the filing fee.

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*.

DATE: June 21, 2011

Residential Tenancy Branch