

## **DECISION**

Dispute Codes      ET

### Preliminary Issues

At the outset of the hearing the Tenant requested a summons to be issued to the police department requiring them to attend and testify on his behalf. The Tenant confirmed that he had not made application for this information under the Freedom of Information Act and confirmed he had received a copy of the police report submitted by the Landlord as late evidence.

Section 76(1) of the *Act* provides that the director may on request of a party, or on the director's own initiative, issue a summons requiring a person to either attend a hearing and give evidence or produce documents to the director relating to the subject matter of the dispute.

The issuance of a summons requires that the following rigorous test be met:

- 1) The request for the summons must be necessary for a fair hearing to be conducted;
- 2) There must be no other means or alternative way to acquire or secure the evidence being sought; and
- 3) The information being sought through the witness must be relevant to the proceeding.

The Tenant's statement about what the police officer was going to present was not clear and the Tenant confirmed receiving a copy of the police report obtained and submitted by the Landlord.

I am satisfied that there are alternative means of securing this evidence, such as requesting the police files through a Freedom of Information request. Although I appreciate that obtaining evidence through this means is more time consuming that is not a relevant factor in determining whether to grant a request for a summons. The only consideration is whether the requested evidence is obtainable by other means.

Finally, I am satisfied that the issuance of this summons is not necessary for a fair hearing to be conducted.

Based on the aforementioned I find that the Tenant's request to summon a witness from the police department does not meet the required test and I deny the Tenant's request for a summons.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to end this tenancy early, obtain an Order of Possession and recover the cost of the filing fee from the Tenant.

Service of the hearing documents, by the Landlord to Tenant, was done in accordance with section 89 of the *Act*, served personally to the Tenant on August 11, 2011. The Tenant appeared and confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has the Landlord met the test to end this tenancy early and obtain an Order of Possession?

### Background and Evidence

At the outset the Tenant stated that he did not receive the Landlords initial evidence package. He alleged that it was not sent to him within the required times frames or in the required manner.

The Tenant initially testified that he was not notified of registered mail to be picked up and later stated that while he received the notification card he has simply been too busy assisting other tenants with their tenancy issues to be able to make the trip all the way downtown to pick up the package. He stated that the Landlord should have had it delivered personally to him by the mail carrier.

The Landlord testified the evidence was sent via registered mail on August 12, 2011 and provided the tracking number (xxxx xxxx xxxxx) in his verbal testimony. The Agent testified that the mail carrier delivers the mail to the front desk where they sort it and hand it out to the tenants. When the registered mail was brought to the desk the Agent

told the mail carrier that he could not sign for it because he was the person who sent it and requested that it be delivered to the Tenant's door. The carrier went to the Tenant's door and attempted delivery however the Tenant was not in his room at the time so a notice card was issued and delivered the next day.

I heard undisputed testimony this is a month to month tenancy in a Single Room Occupancy unit (SRO) that has been in effect since February 1, 2008. The current monthly rent is \$465.28 and the Tenant paid a security deposit of \$212.50.

The Landlord advised they are seeking an immediate end to this tenancy because the Tenant's behaviour has escalated from disturbances, to harassment, to intimidation and now to implied threats with a weapon. They have issued 1 Month Notices in the past for various reasons and have attended dispute resolution hearings. While the Tenant's behaviour has often been aggressive it has now changed to include the use of weapons. A letter was issued to the Tenant July 3, 2011 instructing the Tenant to deal only with front desk staff and not the Landlord. The Tenant has continued to send e-mails to the Landlord and from July 24, 2011 to August 19, 2011 he sent the Landlord six text messages outside of regular business hours.

The Tenant's behaviour is what the Landlord referred to as being "erratic" and he now fears that the Tenant's recent acts of sending him a photo of a knife and dead mouse days before appearing at the front of the pub partially concealing the same knife while pacing back and forth are an indication the worst will happen. He confirmed his staff did not approach the Tenant while he was pacing outside with the knife and they called the police to have the situation dealt with. The police attended, handcuffed the Tenant, seized the knife and released the Tenant.

The Tenant testified and confirmed he had been at dispute resolution on several occasions with this Landlord. He also confirmed he had been issued the letters referred to in the Landlord's testimony. He began by testifying he did not receive the evidence package so he could not speak to the alleged photos or text messages. He later provided testimony confirming he had sent the photos and text messages that were in question. When asked why he was pacing in front of the pub he stated that he was there, as he often is, collecting cigarette butts that patrons throw away. When asked why he had the knife he stated that he needed it to retrieve the cigarette butts from a large crack in the concrete.

The pub security guard testified that he has been employed at this pub for two years. He has seen the Tenant out front picking up cigarette butts on occasion but not as frequently as the Tenant has said. The security guard stated that he has never seen

the Tenant outside the pub with a knife or any other object used to gather the cigarette butts. The incident on the early morning of August 7, 2011 was the first time he ever saw the Tenant with a knife.

The Tenant advised he is a very litigious person who has been involved in assisting other tenants with their tenancy business. He openly admits to contacting the Landlord directly after being requested to deal with desk staff. He continued to speak about the hotel staff as not having the power for approval of the issues he is dealing with and feels he is entitled to deal directly with the Landlord even after being told, in writing, not to contact the Landlord.

The Tenant continued his testimony stating that he was intending to make an application against the Landlord for a "large monetary" award because of many problems with the Landlord's staff. He spoke about several issues at which point I offered the Tenant an opportunity to come to a mutual agreement with the Landlord to end this tenancy. The Tenant did a complete turnaround with his testimony claiming that he really likes where he lives and he likes the interactions he has with the other tenants so if he were to negotiate a mutual agreement to end his tenancy it would require a large monetary amount paid to him by the Landlord.

In closing the Landlord referred back to his documentary evidence pointing out how it supports that the Tenant has been gaining access to other tenant's rooms without permission and how he continues to harass the Landlord with text messages meant to intimidate him. The copies of the police report clearly indicate the Tenant had a knife that was seized by the police.

### Analysis

After careful review of the aforementioned and the previous dispute resolution decisions I accept that the Landlord's evidence has been served to the Tenant in accordance with section 88 of the *Residential Tenancy Act*. I note that the Tenant acknowledged previously receiving the letters and sending the text messages that were reviewed during the hearing and included in the Landlord's evidence. Therefore, all the testimony and documentary evidence has been considered.

Upon careful consideration of the evidence before me I find the Landlord has proven that the Tenant and/or his guests have engaged in an activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property, and has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the Landlord.

Next I have considered whether it would be unreasonable or unfair to the Landlord to wait for a one month Notice to End Tenancy to take effect. I have accepted that the Tenant's behaviour has escalated to include acts of intimidation, implied threats and potential extortion which is or will jeopardize the lawful right or interest of the Landlord and the other tenants.

Based on these conclusions I find it would be unreasonable to wait for a one month Notice to End Tenancy to take effect. The relationship is deteriorating and escalating with the possibility for the Landlord, his agents, or other tenants to suffer further harassment, loss, or injury. Therefore, I grant the Landlord's application to end this tenancy early.

The Landlord has been successful with his application; therefore I award recovery of the \$50.00 filing fee.

### Conclusion

I hereby grant the Landlord an Order of Possession effective **Two Days** after it is served upon the Tenant. This Order is legally binding and must be served upon the Tenant.

The Landlord's decision will be accompanied by a Monetary Order for **\$50.00**. This Order is legally binding and must be served upon the Tenant.

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: August 24, 2011.

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Residential Tenancy Branch