



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FF

Preliminary Issues

At the outset of the hearing the female Tenant answered my question in an inappropriate manner. I explained to all the participants that I would not tolerate rude or antagonistic behaviour during the hearing. I went on to explain what type of behaviour was expected and how they should not interrupt each other's testimony and to take notes if the other party said something they wished to make comment to. Each participant would have an opportunity to provide their testimony and speak to any notes or comments they wished to provide in response to the other party's testimony. I then explained that if any participant displayed rude behaviour they would be disconnected from the hearing and the hearing would continue in their absence.

Shortly after the above explanation I began affirming the participants. When I asked to speak to the male Tenant to have him affirmed he came onto the phone in a rude manner. At that point I instructed the male Tenant he would not be taking part in this hearing, pursuant to the *Residential Tenancy Branch Rules of Procedure # 8.7*, and requested that he return the phone to the female Tenant.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to End the Tenancy early and obtain an Order of Possession, and to recover the cost of the filing fee from the Tenants for this application.

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. Have the Landlords met the burden of proof to end this tenancy early and obtain an Order of Possession pursuant to section 56 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant confirmed receipt of the Notice of Hearing document and denied receiving any copies of the Landlords' evidence. The Tenant stated that her advocate faxed copies of her evidence to the Landlords on the same day they were faxed to the *Residential Tenancy Branch*. The Landlords affirmed they did not receive evidence from the Tenants.

The Landlords provided Canada Post tracking number for packages sent to each Tenant on September 21, 2011 (xxxxxxxxxx) and the second packages sent on October 8, 2011 (xxxx). The Landlords affirmed that evidence was sent in the first package and additional evidence in the second package. The female Tenant's packaged from signed for and the male Tenant's first package was returned unclaimed. The Landlords have not received the second packages back.

The Landlords referred to their written statement and the copy of the letter from the police department they provided in their documentary evidence when they spoke about the events that occurred starting from early September 2011. They advised that when rent was not paid for September 1, 2011 a 10 Day Notice to End Tenancy was issued September 7, 2011. One copy was hand delivered to a male who answered the door at the rental unit who provided the Landlord his first name. A second copy was taped to the Tenants' door. The Landlords had conversations with the female Tenant over the next couple of weeks and each time she told them she was having income assistance issue them a cheque. No cheque was ever received from the Tenant or from income assistance. The Landlords state rent remains unpaid for August, September and October 2011.

Later in the day of September 7, 2011, after the Notice to end tenancy was posted to the rental unit door, the male Landlord attended the rental property to work on other units and the yard. The rental property consists of a side by side duplex that has two upper and two lower rental units. When he attended the property the Landlord noticed that the Tenants' unit appeared to be left unsecure, as the doors were wide open. When he looked inside from the deck he could see the inside looked in disarray like things were turned upside down and piled up so he was concerned the place had been robbed. The Landlord called into the unit and as he entered through the laundry room a red haired man approached the Landlord. This person pushed the Landlord twice and yelled at the Landlord "get out of the house or I'll kill you". The Landlord stated that he felt this person was attempting to encourage the Landlord to fight by pushing him and when the Landlord did not respond that way he threatened to kill the Landlord. The

Landlord said that he felt threatened by this person and thought he was going to harm him so he went to the police that same evening and reported it.

The female Landlord stated that on September 16, 2011 they attended the unit to serve a 24 notice of entry because they had arranged an exterminator to treat the unit. As noted in their written submission they were greeted by an upset male who answered the door. Later that day the Landlords were in the suite next door when they were overtaken by a smell that caused them to choke and suffer from burning eyes and throat. They found out that one of the occupants in the Tenants' unit had sprayed someone with pepper spray.

On September 30, 2011 there was another incident where a male was stabbed while inside the rental unit and had to be taken away by ambulance. The Landlord reference the letter from police which was provided in her evidence that confirmed a stabbing took place inside the rental unit. Since then the adult male son of the lower tenant told the Landlords that the female Tenant of this dispute threatened to teach him how to respect his elders while she was holding a knife. After being informed of this the Landlords amended their application for dispute resolution to seek an end of tenancy and had hoped for a hearing at a sooner date. The amended applications were served to each Tenant via registered mail as noted above.

The Landlords advised that they are currently involved in an investigation with the Ministry of Social Development because there have been cheques issued in their name and cashed, yet they have never cashed these alleged cheques, and there have been several intent to rent forms completed with their signatures, which they did not complete or sign.

In response to the Landlords' testimony the female Tenant stated she did not get the 10 Day Notice to End Tenancy. As for the male occupant the Landlords referred to she stated that was the father of two of her children and he does not reside there. She claims the Landlords have it wrong, that the person they claim threatened the Landlord was not another male but was in fact the male Tenant.

The Tenant claims the ministry of Social Development paid the Landlords her rent directly and she provided print outs from income assistance to prove that plus copies of two receipts issued from the Landlords. She stated she paid \$750.00 towards rent in August 2011 to the Landlords' agent and has a receipt.

The female Tenant confirmed there was an incident where she called 911 and a person was taken away in an ambulance. She claimed she had no knowledge of what

happened and that this person attended their unit after being stabbed so she called for help for him. She stated several times that the stabbing did not occur at the rental unit. The female Tenant also denied threatening the male son from the lower unit.

In closing the Landlords advised the male Tenant has blond hair and they know what he looks like, the person who threatened the male Landlord was definitely not the male Tenant and he had red hair. They requested an order of possession for as soon as possible.

Analysis

The Tenants' evidence consisted of copies of two print outs of income assistance payments which have been altered with sections blacked out and copies of two hand written receipts which also appear to have been altered. The matter before me is a request to end tenancy early and obtain an order of possession pursuant to section 56 of the Act; therefore the Tenants' evidence is not applicable.

I favor the evidence of the Landlords, who stated they served each Tenant with copies of their applications and evidence, as supported by their testimony which included Canada Post tracking numbers, over the evidence of the Tenant who stated that they received copies of the hearing letter and nothing else. I favored the evidence of the Landlords, in part, because the Landlords' evidence was forthright and credible and included a letter from the police department which clearly stated the stabbing occurred inside the rental unit.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the Tenant's explanation of the events that have occurred at the rental unit to be improbable given the ongoing investigation with the Ministry of Social Development and the evidence submitted from the police department.

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

Next I have considered whether it would be unreasonable or unfair to the Landlords to wait for a one month Notice to End Tenancy to take effect. I have accepted that the Tenants and/or his guests have engaged in activity that has ultimately jeopardized the lawful right or interest of the Landlords and the other tenants and has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of the Landlords and another occupant of the property. 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 Landlords suffering further loss or damage. Therefore, I grant the Landlords' application to end this tenancy early pursuant to section 56 of the *Residential Tenancy Act*.

Conclusion

I hereby grant the Landlords an Order of Possession effective **24 hours upon service**. This Order is legally binding and must be served upon the Tenants.

The Landlords have been successful with their application and therefore may retain the one time reward of the filing fee of **\$50.00** from the security 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: October 21, 2011.

Residential Tenancy Branch