



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, O

Introduction

This hearing dealt with an application by the landlord for an order ending the tenancy early, an order of possession and other.

Both parties participated in the conference call hearing.

Preliminary Issue(s) to be Decided

As the outset of the hearing the tenant stated that he had not received the hearing documents for this adjourned hearing until May 3, 2012 and that it was just last night that the landlord provided their evidence to the tenant.

It was verified that the hearing documents for this adjourned hearing were sent to the parties directly by the Residential Tenancy Branch and as the parties were both well aware that this matter was being adjourned, it was determined that the tenant was properly served. In regards to the landlord's late evidence, the evidence in question is essentially a re-writing of evidence originally submitted by the landlord for April 27, 2012 hearing. As the tenant has had more than the required time to review the original evidence the issue of the so called new evidence being served late is moot.

The tenant also sought a determination on jurisdiction for this hearing as the tenant is involved in a matter in criminal court. It was determined that the Residential Tenancy Branch does have jurisdiction over this matter and the hearing continued.

Background and Evidence

This fixed term tenancy began December 21, 2010 monthly rent of \$1100.00 and the tenants paid a security deposit of \$1100.00.

The landlord testified that on April 1, 2012 she was collecting rent from another building she manages and as usual, placed all cheques and cash in a black nylon case. The landlord had this case along with a paper accordion file and her tan purse in her van and covered by a towel. The landlord stated that on this same day she had been

dealing with a flood in her building and at 9:00PM when the flood was under control, she went to her van to start bringing her pets back into her rental unit. The landlord stated that she left the sliding door on the van open so that the light would stay on and she thought this would be okay as she was going to be right back. The landlord stated that when she returned to the van the towel was on the floor her tan purse gone as well the black nylon case and paper accordion file which contained all the cash and cheques that had been collected for rent. The landlord then at 9:30PM reported the theft to the RCMP.

The landlord stated that very late the following morning, 3:30AM, she heard the apartment door for the tenant across the hall close. The landlord thought this was very odd so she looked out her kitchen window and saw the tenant leaving with a red suitcase. The landlord stated that because of the time she thought this behaviour very odd so she decided to follow the tenant and see what he was up to.

After following the tenant at a distance the landlord observed that the tenant had the suitcase when on one side of the bridge but no longer had the suitcase when he got to the other side of the bridge. The landlord went back to the start of the bridge, climbed down the creek embankment, found and recovered the red suitcase that had been in the tenant's possession. The landlord immediately took the red suitcase to the RCMP and had it opened by the police. The landlord's stolen black nylon case and paper accordion file were both found in the red suitcase however the landlord's tan purse and all of the rent payments were missing.

The landlord stated that the next day the RCMP executed a search warrant on the tenant's rental unit however no evidence related to the landlord's missing items was found. The landlord stated that the RCMP advised her that the tenant turned himself in the next day and was charged with theft under \$5000.00.

The tenant testified that he was not supposed to talk about what had happened but stated that the 'worst' that may happen is that he is charged with possession of stolen property. The tenant stated that he has had one court appearance however Crown Counsel had not yet forwarded any charges therefore he has not been charged with anything as of this date..

The tenant empathically denied that the version of events being testified to by the landlord ever took place and the tenant denies he was ever in possession of the red suitcase.

The parties attempted to reach a mutual agreement to end tenancy however an agreement could not be reached.

Analysis

Section 56 of the Act states that a landlord may request an order ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given for cause under Section 47. Upon receipt of such an application, the director may make an order specifying an earlier date on which a tenancy ends and the effective date of an order of possession for the rental unit only if the director is satisfied that certain conditions exist. These conditions are listed in Section 56(2) of the Act.

In the present case the landlord has applied for an order ending the tenancy early on the basis that the tenant has engaged in illegal activity that has or is likely to adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord or has jeopardized a lawful right or interest of another occupant or the landlord and that it would be unfair to the other occupants to wait for a one month notice to take effect.

I accept the landlord's testimony that she observed and followed the tenant when he was in possession of the red suitcase and that when the red suitcase was recovered, the landlord's stolen black nylon case and paper accordion file were both found in the suitcase. I also find the tenant's testimony contradictory as the tenant outright denies the events as described by the landlord even happening and yet the tenant states that the worst charge he may face would be possession of stolen property.

I believe that a reasonable person would consider the parties testimony and make the determination that the tenant was in possession of the red suitcase that contained the landlord's stolen property and that the tenant had engaged in illegal activity that jeopardized a lawful right or interest of another occupant or the landlord.

Therefore I am satisfied based on the evidence before me that the landlord has proved its case.

Conclusion

Based on all of the above, I grant the landlord an order ending the tenancy early. I also grant the landlord an order of possession effective two days from the date of service. This order may be filed in the Supreme Court of British Columbia 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: May 10, 2012

Residential Tenancy Branch