



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This application was brought by landlord on November 29, 2012 seeking an Order of Possession to end the tenancy early under section 56 of the *Act*. This section permits such applications in situations where it would be unreasonable for the landlord to wait for an order under section 47 of the *Act* which requires a Notice to End Tenancy effective on date that is a minimum of one month following service.

Despite having been served with the Notice of Hearing in person on November 29, 2012 by the tenant's son with a witness present, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. As a matter of note, the landlord's son stated that after the tenant had thrown the Notice of Hearing at him on personal service, he had slid it under the tenant's door. I find that service was sufficiently made and the hearing proceeded in the absence of the tenant.

Issue(s) to be Decided

Are the circumstances which have caused the landlord to seek an end to the tenancy of sufficient urgency to warrant the issuance of an Order of Possession under the more stringent requirements of section 56 of the *Act*?

Background and Evidence

This tenancy is in one of four living units in the landlord's 7,000 home. The landlord and the subject tenant occupy separate suites in the upper floor of the building. The tenancy began on November 1, 2010, the tenant pays rent of \$700 per month and the landlord holds a security deposit of \$350.

As a matter of note, this tenancy was the subject of a hearing on February 27, 2012 on the tenant's application to have set aside a Notice to End Tenancy for cause served January 25, 2012 and setting an end of tenancy date of March 1, 2012.

In her decision, the Dispute Resolution Officer found that the tenant had:

1. Continued to harass the landlord with excessive notes, telephone calls and knocking on the landlord's door after having agreed to desist from doing so;
2. Interfered with the landlord and her friend while they were attempting to do repairs on a railing by unplugging a power tool they were using and by stating that if he had a gun he would shoot them;
3. Gone to the landlord's door on December 31, 2011 and blocked her from closing it by placing a heavy two-foot hose between the door and door frame;
4. Conducted himself in such a way during the hearing, that the Dispute Resolution Officer expressed her belief that he was did not seem to appreciate the impropriety of his conduct toward the landlord.

The Dispute Resolution Officer upheld the Notice to End Tenancy. However, the landlord had not been aware of her right to request an Order of Possession under section 55(1) of the Act or to make subsequent application based on the outcome of the hearing.

During the present hearing, the landlord gave evidence that she had attempted to engage a bailiff, but had been advised of the need for an Order and a Writ of Possession.

Partly out of having grown weary of the process and partly out of some sympathy for the tenant, the landlord did not take further action until recent events.

Key among those occurred in October when the landlord returned to her home to find the tenant inside. She was able to make him leave and reported the matter to police who referred her to the present proceedings.

According to the landlord, the unwanted calls, notes and door knocks continued unabated. At one point she told the tenant that she would call her sons for assistance and the tenant stated that he would kill them.

The son attending the hearing gave evidence that, after receiving a frantic call from his mother, he travelled to her home and verified that the tenant was knocking on her door constantly and sometimes making up to 40 contacts a day.

He stated that on or about the night of November 18, 2012, while he was staying with his mother, the tenant was pounding on the door at 4 a.m. When the tenant persisted, he got up and let him in. He told the tenant that the harassment could not continue, and awoke his mother to sign a previously completed Notice to End Tenancy. As his mother was signing, the tenant attempted to stop her, tore the document up and threw it in the son's face.

He stated that, at his urging, his mother came to stay with him for a few days. While she was there, she felt ill and was taken to hospital, the result of which was a four-day hospital stay, and a diagnosis of extreme stress for which she was given a prescription and implored not to return to the rental unit while the tenant remained.

The landlord had submitted a written statement in which she said that the tenant's threats have now gone beyond her person and her home, and now have escalated to her sons.

Analysis

Section 56(2)(a)(ii) of the *Act* authorizes the director's designate to issue an Order of Possession in circumstances in which a tenant , "has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property."

On the evidence before me, I find no question that the landlord is entitled to an Order of Possession under the provisions section 56 of the *Act* and issue such order to take effect two days from service of it on the tenant.

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, effective two days from service of it on 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: December 06, 2012.

Residential Tenancy Branch