



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 5, 2013 by the Landlord 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, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlord be granted an Order of Possession?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the Witness' written statement dated January 18, 2013; three notices of entry; and four photographs.

The Tenant confirmed receipt of the Landlord's evidence and stated that she only received it on March 15, 2013, posted to her door, and therefore did not have time to submit her evidence. When asked what evidence she would have submitted the Tenant stated that she would have provided a copy of the decision from their January 2, 2013 hearing. The Tenant confirmed that she was prepared to proceed with today's hearing

because she had her witness with her to testify. The male Tenant was with her but he advised that he did not want to provide testimony.

The Landlord affirmed that the hearing documents and her evidence was taped to the Tenants' door on March 7, 2013.

The parties confirmed that they wished to have the January 8, 2013 decision reviewed and included as evidence when making my decision. They also confirmed that in the January 8, 2013 decision that findings were made indicating the tenancy began in August 2012, that rent is to be \$600.00 per month until hydro has been re-connected and then \$1,200.00 after hydro has been connected.

The Landlord's Witness advised that he is the real estate listing agent for this property which has been listed since November 20, 2102. He reiterated the information provided in his written statement pointing specifically to the information pertaining to how the Tenants do not co-operate with showings, how they are rude, the messy state in which the property is in, and how the Tenants have turned their dog (Pit bull & Rottweiler cross) on him and a client.

The Landlord's Witness spoke about a showing that occurred in December 2012 when the Tenant refused access to the bedroom where she was storing the dog. Near the end of that showing they were at the front door and the Tenant threatened to turn the dog loose on them as she was holding onto the dog's collar. She told them to get out fast as she was letting go of the dog which caused them to hurry out of the unit in fear of being attacked.

The Landlord's Witness stated that since the hearing in January 2013 the Tenant still refuses them access to show the unit. Approximately two weeks ago they had scheduled a showing and left proper notice yet the Tenant refused access. They re-scheduled and attended another time with a police escort and no one was at the unit. They had a key to the upper rental level but they could hear the dog barking at which time the police suggested that they not enter because they did not want to have to shoot the dog. The Tenants have taken over the lower level and put a lock on the door which the Landlord or real estate agent cannot enter. He said he attempted to reschedule the appointment a second time but the Tenant called the Landlord to say the time would not work for them. The Witness argued that he has been given permission to access the unit as Agent for the Landlord however the Tenants refuse to deal with him or give him access. They have not been able to gain access to the unit since before the previous hearing in January 2013.

Both parties were given the opportunity to ask the Landlord's witness questions; however, both parties declined to ask him questions.

The Tenants' witness said she was at the rental unit when the Landlord showed up and began arguing with the Tenant and the Landlord threatened to burn the house down. When I asked when this conversation took place the Tenant's witness initially stated she did not know when that happened and then immediately stated it was March 5, 2013. I asked the witness how she could say in one instant she did not know when it happened and then in the same breath provide the date. She claimed she just remembered. She denied having the Tenant provide her that information. She said she had nothing further to add. Neither party had questions for the Tenants' witness.

The Landlord stated that she went to the rental unit on March 5, 2013 to give notice that they were scheduling a showing for March 7, 2013. She said initially no one answered the door and after knocking for awhile the Tenant finally came out and began yelling at her to get off the property. The Tenant brought her dog outside to scare her and said "attack" to threaten the Landlord. She said she went back to her car while the Tenant yelled at her that she was going to kill her and that she was going to burn the house down.

The Landlord said she called the police from inside her car and they instructed her to stay in the car until they got there. She saw the Tenant leave on a bike, without the dog, just before the police arrived. When the police arrived she told them what had happened and they told her not to come back to this house as it was not a safe place to be. They gave her a file number and told her to call them immediately if anything else happened or if she needed an escort to attend the unit.

When asked what has occurred since the January 2, 2013 hearing the Landlord stated that she attempted to have the electrician attend to hook up the power. She issued the Tenants a notice on January 6, 2013 for the electrician to be there by January 12, 2013. He attended on January 12, 2013 and was not allowed access. The electrician took the photos on January 12, 2013 to prove that he still could not do the work in such a dangerous place. The Landlord argued that she has had to pay for three bills for this electrician who attends and cannot do the work.

The Landlord stated that the Tenants have kicked out the downstairs tenant and taken over that space. They have placed a lock on the downstairs unit and have not provided the Landlord a key. They have not been able to gain access to show buyers and they are now concerned for their safety and have been instructed by the police not to attend the unit without a police escort.

The Tenant stated that the Landlord's witness did not tell the truth in his testimony. Specifically he did not call the police to have the real estate sign put up; rather she found it and put it back up. She also claimed the witness lied about not being able to show the rental unit and everything else he said. She states that the real estate agent was granted access every time she received a proper notice. Later in her testimony the Tenant confirmed that there was one time that she had to reschedule the showing but she did not know when that occurred.

The Tenant confirmed that during one showing she had her dog in a bedroom and that she took the dog out so they could see the room. She stated that she did not have her dog attack the real estate agent and that her dog does not know any attack commands. She wanted to clarify that her dog is not the breed that they say she is; rather, she is a terrier crossed with a boxer. The Tenant confirmed she got upset with the realtor during that visit because he was making comments about the house and that she was living like a "pig" but she did not have her dog go after them. She argued that her dog was not vicious and that she does not know attack commands.

The Tenant says that she was at the rental unit waiting for the electrician on January 10, 12, or 13th but he never showed up. She confirmed the electrician attend once and put up a new panel but he has never come back. She did not know when he attended to put up the panel but she thinks it may have been before the previous hearing.

The Tenant denies threatening the Landlord on March 5, 2013 and in fact it was the Landlord who threatened her as soon as she got out of her car. The Tenant argued that she had to come outside from the back door because the front door was locked after damage caused by a break and enter. She said she had her friend stay in the back yard to be a witness to what the Landlord was going to say. She argued that the Landlord came to the rental unit that day after she sent the Landlord a text message wanting the money the Landlord was ordered to pay her from the previous hearing. She said the Landlord was angry and it was the Landlord who came up to her and said she was going to burn the Tenant and the house down.

The Tenant wanted to argue that the Landlord had not been complying with the previous orders. I explained that this hearing was not convened to discuss enforcement of previous orders and instructed the Tenant to provide testimony relating to the incident that occurred on March 5, 2013. The Tenant continued to argue that the Landlord has not paid them the money she was ordered to so they have made sure that all rent payments from welfare have been stopped.

I asked the Tenant to provide me a response to the photos submitted by the Landlord. The Tenant stated that the photos should be considered “inactive” because the place has been cleaned up by her friend since these photos were taken. She said her friend cleaned up the property sometime in February 2013. Then she stated that the fuel containers are still there and are required to run the generator their use for electricity and heat.

In closing the Tenant stated that she has a police file number relating to the rental unit being broken into. She said she suspects the Landlord did the break and enter after she attended the unit on March 5th and threatened to burn her and the rental unit. She advised that she did not call the police to report the break and enter until a couple days later.

The Landlord stated she had nothing to do with the break and enter and argued that the rental property looks worse now than it did in the photos so therefore it was never cleaned up. She stated that she is concerned because the police have now instructed her that no one should attend the property as it is not a safe place and her property value is decreasing as these people continue to live there.

The male Tenant was given one last opportunity to provide testimony however, he declined.

Analysis

Section 56 of the *Act* allows a tenancy to be ended early without waiting for the effective date of a one month Notice to End Tenancy if there is evidence that the tenants have breached their obligations under the tenancy agreement or *Act* and it would be unreasonable or unfair to wait for the effective date of a one month Notice to End Tenancy.

Based on the evidence submitted by the parties and their witnesses I place more weight on the oral testimony of the Landlord and her witness than the testimony of the Tenant and her witness.

I placed less weight on the evidence of the Tenant and her witness as I found their evidence to be inconsistent. Specifically, the Tenant initially stated that she had never refused anyone access to the unit and then confirmed a time when she had refused access. Also, she claimed the Landlord attended the rental unit to threaten her in response to the Tenant’s text message and that the Landlord later broke into the unit. However, when describing the events of when the Landlord attended on March 5th to allegedly threaten her, the Tenant indicated she had to come out through the back door because the front door had been previously damaged in the break and enter. This

contradicts her testimony as to when the break and enter occurred as she later claimed it occurred the day after the Landlord attended on March 5th. The Tenant kept trying to argue enforcement of previous orders to have the Landlord pay them money and when I redirected her she stated they made arrangements so the Landlord would no longer be paid rent.

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.

After consideration of the foregoing, I find the Landlord's testimony forthright and credible. Neither the Landlord nor her witness contradicted themselves and I found their explanations of denied access and threats being made by the Tenant to have her dog attack them to be probable given the circumstances presented to me during the hearing. I further find that the Tenants have thwarted the electrician's ability to restore hydro to the rental property by failing to clean up the required area and by preventing the electrician access either directly or by purposely being absent or refusing to answer the door. I note that the Tenants benefit by not having the hydro reconnected because their rent remains reduced by \$600.00 per month for any period that hydro remains unconnected.

Based on the foregoing, I find that the Tenants have significantly breached section 29 of the *Act* by taking the actions they have and I find that the Landlord has established sufficient cause to end this tenancy.

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 accept that the Tenants continue to house dangerous materials on the property, have a dog that poses a threat, and have placed a lock on the basement without providing the Landlord a key. I also accept that this relationship has become acrimonious and the Tenants have interfered with the Landlord's lawful right to inspect and show the rental unit to prospective buyers. 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 suffering further loss or damage. Therefore, I grant the Landlord's application to end this tenancy early.

Conclusion

I HEREBY GRANT the Landlord an Order of Possession effective **two (2) days** after it is served upon the tenants. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I have granted the landlord's application to end this tenancy early pursuant to section 56 of the *Act* and I have issued the landlord an Order of Possession. I also Order that the Landlord may recover the \$50.00 filing fee paid for this application by deducting this sum from the Tenants' security deposit plus interest

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: March 18, 2013

Residential Tenancy Branch

