



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN MENTAL HEALTH ASSOCIATION KOOTENAYS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Preliminary Issues

At the outset of this proceeding the Tenant requested an adjournment on the grounds that he did not receive the Landlord's evidence until yesterday (August 22, 2013); therefore, he did not have enough time to have legal representation. Upon further clarification the Tenant stated that he was not able to get a legal advocate to assist him and he was calling from the advocate's office.

The Landlord testified that the Tenant was in receipt of the Notice of hearing documents and a copy of her application since August 9, 2013, as proven by the Canada Post documents she submitted in her evidence. Their evidence was sent to the Tenant registered mail on August 13, 2013, tracking # RW770863611CA, and based on the Canada Post tracking website they attempted delivery and left him a notice card on August 14, 2013, but he did not pick up the evidence package until August 21, 2013.

The Landlord requested to proceed with the scheduled hearing and asked that I consider the nature of their application to end the tenancy early. She argued that the other tenants are still in danger and are fearful of the Tenant.

The Tenant continued to argue his request for an adjournment stating that he attempted to seek assistance from an advocate since last week (the week of August 12-16th, 2013) and that his no contest order would be heard in court next week. He confirmed that he did not pick up the evidence package until recently because he was not checking his mail daily. He argued that he does not have staff to do paper work for him like the Landlord does.

I requested to speak to a staff member at the advocacy office and the Tenant passed the phone to J.T. who is the office manager. J.T. confirmed that the Tenant attended their office towards the end of last week sometime and requested assistance. She explained that she told him that they could not provide him assistance because (1) it was short notice and (2) because they are not lawyers – they normally provide

assistance up to the hearing and do not speak at the hearings. They sampling assist clients prepare their case and arguments prior to the hearing.

The *Residential Tenancy Rules of Procedure 6.4* provide as follows:

6.4 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- a) the oral or written submissions of the parties;
- b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in
- c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- e) the possible prejudice to each party.

Upon consideration of the above, I considered that a delay could be seen as prejudicial to the Landlord if the Tenant does pose as a threat to other tenants. I also considered that the Tenant appeared at the hearing asking to wait to be represented by an advocate, when the advocate's office does not represent clients they simply assist in preparing for the hearing. The Tenant was already proceeding with his evidence orally; therefore, I did not find that it was prejudicial for the hearing to proceed as scheduled, and I declined his request for an adjournment.

I informed both parties that once the hearing began I may find cause for adjourning the proceeding, as requested, and if that occurred I would provide additional instructions at that time. Otherwise we would be proceeding as scheduled.

On a procedural note the Tenant signed into this hearing a few moments after the Landlord had informed me that she had two witnesses standing by in another room. The Landlord's telephone line was causing feedback so she was instructed to disconnect and call in on a different line. The Tenant did not announce at the beginning of the hearing that he had a witness standing by.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 8, 2013, by the Landlord to end the tenancy early and to obtain an Order of Possession.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. 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 pursuant to section 56 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement; crime free housing addendum; Canada Post receipts and tracking information; warning letter issued to the Tenant; police reports consisting of an undertaking and a promise to appear; and four witness statements.

The parties entered into a written month to month tenancy that began on February 28, 2013. The monthly subsidized rent is currently payable in the amount of \$375.00, reviewed annually, and the Tenant paid a security deposit of \$335.00 based on market value rent.

The Landlord testified that they are seeking an Order of Possession based on an emergency end of tenancy because the Tenant is dangerous, as supported by their evidence. She pointed to a warning letter that was served to the Tenant on July 5, 2013, after an incident where he was verbally abusive to other tenants.

The Landlord argued that the Tenant's behaviour has escalated from causing verbal abuse to physical abuse. She stated that an incident occurred on August 6, 2013, which has resulted in the Tenant being charged with assault and having a "no contact order" and "undertaking" issued as supported by the copies of the police documents provided in her evidence. She is concerned as the parties involved reside on the same floor in

the rental building and there is no staff or managers on site after normal business hours (9:00 a.m. - 5:00 p.m.) on weekends. She indicated that other tenants attempting to avoid the Tenant. She pointed to the tenancy addendum and noted that the Tenant agreed to the crime free housing agreement. She argued that the Tenant has clearly breached this agreement; therefore his tenancy should be ended.

The Tenant began his testimony by attempting to discredit two of the people involved in the incident which occurred August 6, 2013, by talking about their sexual preferences or mental health issues. I instructed the Tenant to keep his testimony to the events which occurred which resulted in the warning letter that was issued July 5, 2013, and which occurred on August 6, 2013, just prior to his arrest.

The Tenant testified that he was arrested on August 6, 2013, and had to spend the night in the drunk tank after another tenant (H.B.) called the police. He said he was cooking dinner for his girlfriend and this other tenant (H.B.) showed up to borrow some movies. His girlfriend asked her to come inside and the two girls turned up the music and started dances. His male neighbor (M.D.) knocked on his door upset because the music was too loud so he told the girls to turn down the music and took the remote while he continued to make dinner. The next thing he knew the cops were at his door and he told the two police officers he had turned the music down. He told them he asked the other girl to leave and they still arrested him and put him in the drunk tank.

At this point the Tenant asked a staff member to assist someone to sign into the hearing. He stated that he was told someone was in area of the office and was going to be providing testimony as his witness. He claimed not to know who the person was and said the advocate's office staff just told him there was someone there.

A woman by the name of M.D. affirmed to tell the truth and introduced herself as one of the person's named in the no contact order. She stated that she asked the Landlord to blacken out her name in the witness statements because she did not believe the statements said what really happened on August 6, 2013.

M.D. continued her testimony saying "this is the truth" we were dancing and nothing happened like what H.B. or M.D. were saying. H.D. was there to borrow movies and she left and about 15 minutes later the police were at the door and told her to go back to her room while they took the Tenant away.

I rephrased M.D. testimony and then asked if she was the Tenant's girlfriend and if the Tenant told her about the hearing and asked her to come and testify today. She confirmed that she was the Tenant's girlfriend and that he did ask her to come to the advocate's office to testify as his witness.

The Landlord took exception to M.D.'s witness testimony because she was not made aware of the presence of this witness prior to the hearing. The Landlord had no questions for this witness but indicated that the police would not proceed with arresting

the Tenant, laying charges against him, and keeping him in jail overnight if the incident occurred as described by M.D.

The Tenant took exception to me asking if the witness was his girlfriend and if he had asked her to testify. He argued that he does not have contact with M.D. but he does have contact with her sister. He continued his attempts to speak about irrelevant matters pertaining to the Landlord's witness's behaviors to which I instructed the Tenant to stop or I would be muting him phone.

Neither party had any further questions for the Tenant's witness so I requested the Landlord bring in her witness H.B. I instructed the Tenant that when I turned the floor to him he was to keep his questions relevant to the matters before me.

H.B. provided affirmed testimony that indicated that the Tenant grabbed her by the neck and pushed her into the wall. She stated she was leaving the male Tenant M.D.'s apartment and she saw the Tenant's girlfriend M.D. walking towards her with the Tenant close behind; and both were extremely drunk. The girlfriend asked her if the male M.D. was home and she said yes, at which point the Tenant grabbed her and told her to get out of the way. The Tenant then began to yell at the male tenant M.D. to put clothes to which she responded "he has clothes on just not a shirt". She said the Tenant was still ranting and raving demanding his videos back. So she went and got the videos to return to the Tenant.

H.B. stated that by the time she came back with the videos the Tenant and his girlfriend were back in his apartment and the girlfriend kept begging her not to leave because she was scarred. So she left and called the police.

The Tenant was given the opportunity to ask the witness questions and after clarifying a portion of her testimony he started to speak about irrelevant issues, against my instructions. At that time I muted the Tenant's telephone and proceeded to hear questions from the Landlord.

The Landlord asked the witness how she was feeling and what she was doing. The Tenant advised that she was fearful that the Tenant would take this out on her so she was seeking temporary accommodations until the Tenant is removed from the building.

Each party was given the opportunity to provide closing remarks. The Landlord requested an Order of Possession for as soon as possible and stressed the fact the other tenants are living in fear. She noted that she had one witness who had not yet testified, the male tenant M.D. I informed the Landlord that I would not be hearing from that witness as I would be considering his written submission.

The Tenant was instructed to provide closing remarks pertaining to the relevant issues and start speaking about the irrelevant issues relating to the male tenant, M.D. again. At that point I concluded the hearing.

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 a tenant has 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 his witness as I found their evidence to be inconsistent and unreliable. Specifically, the Tenant admitted that he was arrested, charged with assault, and had to spend the night in the drunk tank, yet denies that anything more than his music being too loud occurred during the evening in question. The Landlord submitted documentary evidence which included the undertaking and no contact order that was issued as a result of the incidents that occurred on the night in question.

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 evidence was forthright and credible. Neither the Landlord nor her witness contradicted themselves and I found their explanations that the police would not arrest and charge someone with assault if the only issue was music that was being too loud.

I accept the Landlord's submission that the Tenant's behaviour is escalating in the short time of this tenancy. His tenancy began February 28, 2013; he was issued a warning on July 5, 2013, about verbal abusive behaviour, and charged with assault against another tenant on August 6, 2013.

Based on the foregoing, I find that the Tenant has significantly breached section 28 of the *Act*, inhibiting the quiet enjoyment and safety of the other tenants; and has breached

the crime free agreement he entered into with this tenancy. Therefore, 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 Tenant's behaviour has escalated in just over a month from verbal confrontations to physical confrontations, which places the other tenants at risk. I also accept that the Tenant's relationships have become acrimonious. 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 the Tenant's behaviour is escalating. 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 Tenant. This Order is legally binding and may be filed with 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: August 23, 2013

Residential Tenancy Branch

