



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Greater Victoria Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing was convened in response to an application by the Landlord for an early end of tenancy and an Order of Possession pursuant to section 56 of the *Residential Tenancy Act* (the “Act”).

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Background and Evidence

The tenancy started on May 1, 2013.

The Landlord states that on or about May 19, 2014 a makeshift weapon was discovered in the Tenant’s unit during a police search, the Tenant has been charged in relation to this incident and that they have heard that the Tenant will also be charged with careless storage of firearms and ammunitions. The Landlord states the during the police search the entire building of 50 units was shut down for three hours. The Landlord states that the building houses seniors and persons with disabilities and that these tenants are afraid. The Landlord states that two tenants wrote statements in relation to their fears however it is noted that the Landlord did not provide any copies of these letters. The Landlord states that the Tenant has a medical disability and attends dialysis 4 times a

week. The Landlord states that on one occasion when informing the Tenant that 22 rounds were found the Tenant told the Landlord that the Tenant must have dropped them.

The Landlord states that the improper storage of guns is illegal and that the Tenant has a cavalier attitude towards guns. The Landlord indicates that media coverage has also raised concerns in relation to public knowledge of the buildings address and persons looking to break the law. The Landlord argues that waiting for a one month notice to be issued and to take effect would be unfair as it would increase the fear of the other tenants and possible damage may occur during the wait.

The Tenant submits that the make shift weapon was a pipe bomb and indicates that it was no larger than a firecracker. The Tenant submits that he obtained the pipe bomb after intervening with another person's attempt to set it off outside a pub. The Tenant submits that the bomb was stored in a drawer with the intention to take it away and safely detonate it at a gun range. The Tenant indicates that because he became ill and started dialysis he forgot about it until found by police approximately 8 months later. The Tenant submits that the police had searched the unit after the Tenant, "from a scream of frustration" at his medical situation, spoke "serious words with a doctor". The Tenant submits that this incident was reported leading to a search of the unit only for precautionary measures.

The Tenant states that he legally owns several guns, that he is licensed to have the guns and that he uses them for hunting and recreation. The Tenant states that these guns were also stored in the unit with some of them in the closet. The Tenant states that no charges have been laid in relation to his guns and that all the guns and ammunition have since been given away.

The Tenant submits that his disease is debilitating, that without a kidney donation he does not expect to live beyond a year and that to remain in the unit is necessary for his health. The Tenant provided a note from a physician. The Tenant submits that a

numbers of persons are assisting the Tenant and are providing support that includes the provision of funds to assist the Tenant to live. The Tenant states that he is agreeable to the Landlord entering the unit at any time to check for anything. The Tenant submits that the other tenants do not support the eviction of the Tenant and provided a petition in this regard from the tenants from 25 of the units. The Tenant states that the ammunition found by the Landlord had likely fallen from his pocket having placed them there while at target practice. The Tenant indicates that if the Landlord's application is granted he will become homeless.

The Landlord states that the petition does not mention the presence of the guns and questions whether the tenants who signed the petition had knowledge or awareness of the guns and ammunition when they signed the petition.

Analysis

Section 56 of the Act provides that a landlord may make an application to end a tenancy earlier than it would end if the landlord issued a 1 Month Notice to End Tenancy for Cause and obtain an Order of Possession in certain circumstances. It is not necessary for the landlord to issue a 1 Month Notice; however, the landlord must show that:

- (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
 - (iii) put the landlord's property at significant risk;
 - (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlord's property,
 - (B) 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, or

- (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (v) caused extraordinary damage to the residential property, and
- (b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 *[landlord's notice: cause]* to take effect.

Both Parties made compelling arguments however given the undisputed evidence of a criminal charge in relation to the presence of the “pipe bomb”, I find on a balance of probabilities that the Landlord has substantiated that the Tenant engaged in an illegal activity that put the Landlord’s property and other tenants at significant risk.

The petition from the other tenants does carry weight in relation to both fears of the tenants and in relation to knowledge of the character of the Tenant however this weight is tempered with the lack of evidence on whether that the tenants who signed the petition had knowledge of the storage of guns and ammunition in the unit. The Tenant’s own evidence in relation to the storage of the guns in the closet of the unit, together with the presence of a pipe bomb, supports the Landlord’s argument that the Tenant has a cavalier attitude towards weapons.

Despite the Tenant’s evidence that all the guns and ammunition have since been voluntarily removed, there is no evidence that the Tenant’s right to own and possess guns has been restricted and I consider the Tenant’s own evidence at this hearing that he carries a legal right to own and possess guns. I find that it is therefore more likely than not that the Tenant does not currently face any restrictions on gun possession. Given the Tenant’s evidence of acute medical frustration in the face of a continuing and growing life threatening illness and considering that the Tenant continues to carry a legal right to have guns in his possession if he chooses, I find that the removal of the guns and ammunition does little to reduce the risk of harm or fear and that it would be unfair for the Landlord and the other tenants to wait for a one month notice to take

effect. I find that the Landlord has therefore substantiated an entitlement to an order of possession.

While the Tenant argues that he will become homeless if the tenancy ends given the Tenant's own evidence of a support system, I find that this argument to be weak. However out of consideration of the Tenant's illness and in order to provide some time to the Tenant to make preparations for the end of the tenancy, I make the order of possession effective June 30, 2014.

Conclusion

I grant an Order of Possession to the Landlord **effective 1:00 p.m. on June 30, 2014.**

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: June 13, 2014

Residential Tenancy Branch

