



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, OPC, OPB, MND, MNSD, MNDC, FF, ET

Introduction

This hearing dealt with applications by both the tenants and the landlord. The tenants applied:

- for more time to make application to cancel a notice to end tenancy
- to cancel a notice to end tenancy for cause
- to recover their RTB filing fee

The landlord applied:

- for an order of possession
- for a monetary order for damage to the unit, site or property; for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; and to recover the RTB filing fee

A week before the hearing, the landlord applied to amend her application to add an application to end tenancy early. At the hearing, the landlord withdrew her monetary claims and will pursue these at a later date.

Both the landlord and tenants attended the teleconference hearing and gave affirmed evidence. A witness for the landlord "DB" also gave affirmed evidence.

Issue(s) to be Decided

Is the landlord entitled to end the tenancy early?

If not, did the tenants file their application to cancel the notice to end tenancy within the prescribed timeframe? If not, are they entitled to more time to do so?

If the tenants may apply to cancel the notice to end tenancy, should the notice be cancelled?

Background and Evidence

The parties agree the tenancy started February 15, 2014. The tenants are obligated to pay rent of \$1,150.00 per month in advance on the first day of the month. The tenants also paid a security deposit of \$575.00 and a pet deposit of \$575.00.

The parties agree the landlord personally served the tenants with a Notice to End Tenancy for Cause (the "Notice") on June 19, 2014. The Notice has an effective date of July 31, 2014 and specifies the following reasons:

- Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- Tenant has caused extraordinary damage to the unit/site or property/park

The Tenant's Application for Dispute Resolution (the "Tenant's Application") is date-stamped by the RTB Victoria office "June 26, 2014". The file indicates the RTB contacted the tenants to clarify the Application; the tenants did so on July 2, 2014 and the Notice of a Dispute Resolution Hearing was issued that day.

The landlord gave evidence that she wishes to amend her application to include an application to end the tenancy early. She gave evidence that certain events since the Notice was served have escalated the matter to an emergency situation.

The landlord bases her application to end the tenancy early on the events of August 15 and August 18, 2014. The landlord says that on August 15th, she went to the rental property to give the tenants her Application for Dispute Resolution for this hearing. Her boyfriend came with her in a separate vehicle. The male tenant was outside with two children, and she gave him the documents. As she was leaving, the female tenant was arriving home; only one car can pass through the gate at a time and so she waited for the female tenant to enter the gated property and then drove her own vehicle out. The landlord says that about five minutes later the female tenant phoned her and was angry about the Landlord's Application for Dispute Resolution; the male tenant was "ranting" and "yelling" in the background. Shortly afterward, the RCMP arrived at the landlord's boyfriend's home and said they had had a report that the landlord and her boyfriend were driving drunk.

The landlord says that neither she nor her boyfriend had been drinking. Her evidence is that the RCMP told her it was obvious there was no alcohol problem. The landlord and her boyfriend then drove to a friend's house; the RCMP vehicle was initially ahead of them and then behind them on the way.

The tenant says the landlord is always drinking. He says she "came flying into the driveway" and almost hit him and his child. He said he knew she had been drinking and was speeding. He says the landlord almost hit the female tenant as the female tenant arrived home. He agrees he told the RCMP. His evidence is that the RCMP told him they were sure the landlord and her boyfriend had been drinking but they were not able to charge them because they were no longer in their vehicles.

The landlord disputes that she almost hit anyone when she went to the rental property on August 15th.

The landlord says that on August 18th, she again went to the rental property to serve the tenants with her evidence for this hearing. When she got there, she noticed that some wooden stairs had been relocated and she took some photos of this. She says the male tenant noticed her taking photos and began yelling at her and telling her to get off the property. She got into her truck to do so. At that point, she says the male tenant ran and closed the gate (which is the only entrance/exit to the property). She says he told her he had guns in the house and she better not be going anywhere. The landlord stayed in her truck and called 911. The male tenant then moved the female tenant's car in front of the gate so that the landlord could not exit in her vehicle. The landlord said she could not get out of her vehicle because there would be nowhere to run. She says she waited 17 minutes for the RCMP to arrive. When they arrived, the RCMP told the tenant to allow the landlord to leave.

The landlord says that since the August 18th incident she is afraid of the male tenant. Her position is that it would be unfair for her to have to wait for a new notice to end tenancy for cause to take effect. She states she usually picks up the rent in person, and is no longer comfortable doing that. She says she has a place about one kilometre away from the rental unit where she has been living for three months, but she no longer feels comfortable staying there.

The tenant agrees the landlord came to the rental property on August 18th to serve papers. He says she took some photos and he asked her to leave. His evidence is that she refused. He says he called the police and then shut the gate (with the landlord's vehicle inside). He says the landlord then went and sat in her truck and he stood at the gate waiting for the RCMP. He agrees he moved a car so that the gate could not be

opened. He says he was wrong for blocking the landlord in. He agrees he is a gun owner and he had told the landlord that in the past, however he states there was no talk of guns that day.

The tenant disputes that the landlord lives at her property about one kilometre from the rental property; he states the landlord lives with her boyfriend.

The landlord provided evidence in support of the Notice, and the tenant provided evidence in rebuttal. I have not summarized the parties' evidence on the reasons set out in the Notice, because my decision on the landlord's application to end the tenancy early makes consideration of the Notice unnecessary.

Analysis

The Tenant's Application as filed June 26, 2014 appears to me to be complete. The tenants applied to cancel a notice to end tenancy for cause, and made no other applications; they were not required to make any other applications. I find the Tenant's Application was filed within the 10 days prescribed by Section 47 and I therefore do not need to consider an application for more time.

I find it is appropriate to allow the landlord to amend her application for dispute resolution to add an application to end the tenancy early. The tenants were already on notice that the continuation of their tenancy would be at issue at the hearing. The tenants could reasonably expect that events that transpired between the service of the Notice and the hearing would be brought forward at the hearing. Also, the tenants were present at the events that were raised and so have full knowledge of them. Given the nature of the issues already at stake at the hearing and given the absence of prejudice to the tenants, it is appropriate to allow the landlord to add a claim to end the tenancy early.

Section 56 of the Act provides that a landlord may make an application for dispute resolution to request an order ending the tenancy on a date that is earlier than the tenancy would end if notice to end tenancy were given under Section 47 [landlord's notice: cause], and granting the landlord an order of possession in respect of the rental unit.

Section 56 requires that a landlord prove two things. First, the landlord must prove that a cause exists to end the tenancy and the cause must be one or more of those listed in Section 56(2)(a). Secondly, the landlord must prove that 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 to take effect, pursuant to Section 56(2)(b).

In this case, I find that the landlord has proven at least one cause listed in Section 56(2)(a). I find that the male tenant's actions in physically preventing the landlord from leaving the rental property on August 18, 2014 constitute significant interference with and unreasonable disturbance of the landlord. While the parties give somewhat different accounts of the incident, the tenant agrees that he both closed the gate and blocked the gate with a vehicle to prevent the landlord from leaving the property. I find this was an aggressive and threatening act, with or without reference to guns.

I find the landlord has also proven that it would be unreasonable or unfair for her to have to wait for another notice to end tenancy for cause to take effect. In this case, the male tenant's actions on August 18, 2014 were aggressive and threatening. It would be unreasonable and unfair for the landlord to have to continue dealing with a tenant who has behaved in a threatening manner toward her.

For the foregoing reasons, I find the landlord is entitled to end the tenancy early, pursuant to Section 56(2) of the Act. I grant the landlord an order of possession which must be served on the tenants. Should the tenants fail to comply with the order, it may be filed for enforcement in the Supreme Court.

Since the tenancy is at an end, it is not necessary that I deal with the tenants' application to cancel the notice to end tenancy for cause. The tenants' application is therefore dismissed.

The landlord's monetary claims for compensation for damage and lost rent were withdrawn. I find the landlord is entitled to recover her RTB filing fee of \$50.00 from the tenants. **I order that the landlord retain \$50.00 from the tenants' security deposit** as compensation for her RTB filing fee for this hearing. The landlord also claimed costs of printing, developing photographs, and mailing costs for evidence for this hearing. However the Act does not provide for a party to recover costs of participating in a hearing other than the filing fee, and those claims are therefore dismissed.

Conclusion

I grant the landlord an order of possession, pursuant to Section 56(2). The landlord may retain \$50.00 from the tenants' security deposit. The tenants' application is dismissed.

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 28, 2014

Residential Tenancy Branch

