



Dispute Resolution Services

Page: 1

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 for Dispute Resolution under the Residential Tenancy Act (the Act) by the landlord for an end to a tenancy and an Order of Possession pursuant to Section 56 of the Act. The hearing was conducted via teleconference and was attended by the landlord and the tenant. The tenant acknowledges receiving the landlord's application and document evidence of the landlord which includes a copy of the tenancy agreement, 1 page transcripts of 2 separate voicemail recordings from other tenants of the residential property, and a 1 page statement of another tenant of the residential property, and witness in this matter. The parties participated with their testimony and submissions during the hearing. The hearing also heard from 2 witnesses – both residents of the residential property. The parties were also given opportunity to resolve their dispute. It must be noted that Rule 3.2 of the Rules of Procedure stipulates as follows:

3.2 Evidence relating to an Early End to a Tenancy

When a landlord is seeking an early end to the tenancy, the landlord must submit to the Residential Tenancy Branch **all** evidence with the application for dispute resolution, or, when applying for dispute resolution online, the next day. All evidence to be relied on at the hearing must be served on the respondent with the Notice of Hearing package described in Rule 3.1 [*Documents that must be served*].

Only evidence which is relevant and submitted in accordance with the Rules of Procedure has been considered for this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession without the requirement of one(1) Month's Notice to End Tenancy - pursuant to 56 of the *Act*?

Background and Evidence

This tenancy started December 01, 2014. In the early hours of December 24, 2014 there was a commotion - "disturbance" - in the common hallway of the residential complex. As a result, the tenant was eventually escorted by Police and hospitalized. The tenant claims that they experienced an "anaphylactoid" condition - or severe medical reaction, or side effect - to some new medication given to them by their Doctor, for relief of a chronic back pain condition.

The landlord testified that the subject residential complex is primarily occupied by tenants who are seniors. The landlord received information from some of the residents of the complex that on December 24, 2014 they heard shouting and banging of doors in the hallways of the residential complex and that the tenant was also reported to have torn down drapes and knocked down door decorations. The landlord stated they have no record of a disturbance by the tenant before or after the December 24 incident.

The landlord provided a voicemail transcript from one tenant stating, "On the 22nd or 23rd a new fellow that moved in here sort of went crazy or whatever, berserk or whatever", the tenant, "was banging and shouting and walking up and down the halls. . . . sitting on the floor in certain spots and kicking at the doors", "he apparently lost his keys and stuff when he was doing this, and they are in the office". The landlord also provided 2 witnesses, also residents. One of the witnesses (LM) provided a handwritten statement they heard shouting, pacing of the floor and sounds of banging on doors. The statement describes that they quickly left their apartment and made their way out of the building, noting broken Christmas door ornaments, and telling another resident to call police, along the way. The statement describes they also found keys, a belt and scissors on the floor as they left the building, and stating, "this man seemed to be going through some kind of psychotic episode." The statement further states they are concerned about the safety of the residents. LM also appeared as a witness. They testified that on December 24, 2014 they were left feeling afraid, and feeling vulnerable because of the tenant's conduct. They added that on December 24, 2014 they also smelled alcohol from the tenant.

JL appeared as a witness. They testified that they reside next door to the tenant. They testified they felt "scared" on December 24, 2014, as they lay ill in bed and hearing the tenant banging every hour. They testified that they no longer feel afraid, but were "terrified" at the time; and, that they prefer to feel safe, and that the event of December 24 has left them feeling their living situation is unpredictable. JL testified that before and after the December 24 event they did not experience any notable occurrence regarding the tenant.

The tenant stated that on December 23, 2014 their doctor gave them a new "synthetic steroid medication" for their back pain, and advised they could experience certain side effects. The tenant testified that they are not clearly aware of what occurred in the early hours of December 24. They were told by hospital staff that he suffered a severe

reaction to the new medication – that he went into shock, and was likely in a sleep-walking state with involuntary reflexes – which he was told were all side effects known to be associated with the medication. He was advised to immediately rid himself of the medication, which he claims he flushed down the toilet. The landlord claims they do not find the tenant's account credible because the tenant cannot provide the name of the medication and speculates the tenant likely intentionally mixed a medication with alcohol and the combination resulted in the concerning conduct on December 24, 2014. The tenant testified that he does not drink alcohol and cannot drink it. He testified that to this day he does not recall the hours from the time he took the medication to the time he awoke in hospital. He does not know the name of the medication as he simply disposed of it, but that if he had had more time he could obtain details of it and other hospital details in support of his account. The tenant testified that because of his pain he was originally grateful for the medication given him and he took it on the advice of his Doctor, and that the events of December 24, 2014 were beyond his control. The tenant testified he is "very" remorseful of his conduct and the events of December 24, 2014, and has made written apologies to the tenants of the building, stating that there will not be a repeat of the events.

Analysis

On preponderance of all the relevant evidence in this matter I find the following.

I found the witnesses in this matter forthright, articulate and clear in their testimony, particularly in their concern for their situation as they move forward. I found the landlord equally so, that in the absence of clearer and additional information they are suspicious of the tenant's account and concerned for the interests of the other tenants if the tenant's tenancy were to continue. I found the tenant forthright, articulate, and remorseful about their stated lack of control over the events of December 24, 2014, and their determination to avoid a repeat of the circumstances.

I find the evidence of LM did not provide how they came into contact with the tenant during the events of December 24, 2014, so as to ascertain they smelled of alcohol; and this leads me to doubt the accuracy of this portion of evidence. I find the available evidence does not support the landlord's speculation the tenant intentionally or unintentionally mixed alcohol and drugs resulting in the tenant's conduct. I accept the evidence of the tenant, and all individuals in this matter, that the events of December 24, 2014 were an isolated incident with no previous or repeated occurrences of concern to the landlord or to the other tenants.

I find that **Section 56** of the *Act* is two-fold, in that it allows a landlord to request an end to a tenancy and for an Order of Possession without providing a 1 Month Notice to end, if the landlord has cause to end the tenancy *and* 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 to be effective*.

Based on all the evidence submitted, I find the landlord has established that on December 24, 2014 the tenant, by all accounts advanced, significantly *disturbed another occupant of the residential property*. However, I do not find that there is sufficient evidence to establish that, as a result of the subject isolated incident of December 24, 2014, it would be unreasonable or unfair to the landlord and other occupants of the residential property, *to wait for a Notice to End tenancy issued under Section 47 to take effect*. Therefore, I **dismiss** the landlord's application for an early end to the tenancy. The landlord is at liberty to issue the tenant a 1 Month Notice to End Tenancy for Cause in accordance with the Act.

Conclusion

The landlord's application **is dismissed**.

The tenancy continues subject to a Notice effective to end the tenancy.

This Decision is final and binding on both parties.

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: January 13, 2015

Residential Tenancy Branch

