



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 325569 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") to end the tenancy early and obtain an Order of Possession.

The Landlord appeared for the hearing and provided documentary evidence prior to the hearing as well as calling her son as a witness to give testimony. The Tenant appeared 18 minutes late after the hearing had commenced; therefore the testimony provided by the Landlord prior to the Tenant appearing was recapped with the Tenant. The Tenant called his girlfriend as a witness to provide testimony during the hearing. All testimony was given under affirmation.

No issues in relation to the service of the Landlord's Application and the parties' written evidence were raised during the hearing.

The hearing process was explained to the parties who understood and had no questions in relation to the conduct of the proceedings. The parties were provided with a full opportunity to present evidence, make submissions to me and to cross examine each other on the evidence provided.

Issue(s) to be Decided

Is the Landlord entitled to end the tenancy early and obtain an Order of Possession?

Background and Evidence

The Landlord testified that this tenancy for the upper portion of a residential home located on 14 acres of forested land started on May 1, 2013. A written tenancy agreement was completed which established rent payable by the Tenant for a total

amount of \$1,100.00 per month. This amount was payable in the amount of \$550.00 on the first day of each month and the other \$550.00 on the 15th day of each month. The Landlord requested a security deposit from the Tenant at the start of the tenancy but none was paid by the Tenant; the Landlord did not further pursue this issue.

The Landlord testified that on January 7, 2015 she served the Tenant with a 1 Month Notice to End Tenancy for Cause (the "Notice"). The Notice was provided into written evidence and shows an effective vacancy date of February 28, 2015.

The Landlord explained that the Notice was given because the Tenant had caused extraordinary damage to the rental property, the Tenant had significantly interfered with and disturbed her, put her property at significant risk, and is now jeopardising her lawful right with the local regional district.

The Landlord explained that while she had issued the Notice which seeks to end the tenancy at the end of February, 2015, she fears the issues created by the Tenant will continue and get worse and that she may be liable to more fines imposed on her by the regional district and serious disturbances if she does not end the tenancy immediately.

The Landlord testified that in the summer of 2013, the Tenant started to cut down large pine trees on the property. The Landlord testified that a total of 12 trees were cut down without her permission. The Landlord's witness, who resides in the lower portion of the home, testified that he had observed the Tenant cutting down the trees and had asked him to stop doing this, after which point he did.

The Landlord testified that the Tenant had created a dirt road at the back of the property in order to give better and quicker access to the main road adjacent to the rental property. The Landlord's witness explained that he had sold a four wheel drive vehicle to the Tenant and the Tenant used this car to drive in and out of the rear of the property. Over time, this had created a dirt road and damaged the forested area at the back of the property.

The Landlord testified that in July, 2014 the police had been called to the property because the Tenant had been shooting at some unknown male who was attempting to use fuel to burn down the property. The Landlord testified that the Tenant had left the property before police arrived and when they conducted a search of his rental home they found stolen property as well as several dangerous dogs.

The Landlord then referred to her main reason for wanting to end the tenancy early which was due to a forest fire that took place on September 21, 2014. The Landlord

explained that the local fire department were called out to extinguish a forest fire in the vicinity of the rental property and that several other fire departments had to be called in to get the fire under control during the hot fire ban season. The Landlord explained that because the fire had eventually been determined to be human caused and that she was the property owner, she has now been billed for the costs of extinguishing the fire in the amount of \$27,973.07 by the regional district.

In support of this, the Landlord provided the invoice from the regional district for the above amount which includes a detailed breakdown of costs associated with the extinguishment of the fire. The Landlord also referred to two letters issued by the regional district regarding the fire incident which were provided into written evidence.

The first letter is dated October 20, 2014 in which the fire manager writes that the fire of September 21, 2014 was "human caused as lightning and electrical ignition sources were ruled out". The letter then goes on to state that an investigation is in process and that recovery costs may be assessed from the owner.

The letter then continues to refer to a previous incident on July 2, 2014 where the fire department had attended the rental property in response to a burning complaint, where a 1.5 meter fire area was discovered smouldering and was subsequently fully extinguished. The letter then states that the burning by-law was explained to several of the occupants onsite and that the occupants at the property for both incidents were neither helpful nor cooperative during the response. The letter also states that if a fire is determined to be human caused, the property owner must assume responsibility for the fire under the provisions of the fire prevention by-law. The Landlord also provided a full copy of the fire prevention by-law into written evidence for this hearing.

The second letter from the same fire manager was sent to the Landlord and states that the fire was "...human caused and the outcome of the investigation clearly indicates that the tenants of your property were responsible for the fire and subsequent wildfire".

In the same letter the fire manager requests the Landlord to make payment for the costs in the amount of \$27,973.07. The letter then goes on to detail the Landlord's request from the fire manager for additional information on historical issues associated with the rental property. The fire manager writes that he is not at liberty to speak to incidents not under his authority but can confirm the letter sent to the Landlord by him on October 20, 2014 during which a warning for illegal burning was issued. The fire manager continues to write that "I also advise, that the official fire investigation revealed more than a dozen individual burn sites located throughout the property as well as the discovery of a bullet ridden 20 pound cylinder located on the site property".

The fire manager continues to write that the fire department records also indicate a "separate issue reported for this property, with regard to a ditch fire which was ignited by the same resident. Most fortunately that fire was reported extinguished prior to the fire department response".

The Landlord continued to testify that the police had indicated to her that the Tenant had been arrested for drug dealing and feared that there were unknown occupants frequenting the property with a likelihood of more incidents and disturbances.

The Landlord's witness confirmed that the neighbours had complained to him about the Tenant having dangerous and vicious dogs that were causing a disturbance. However, the Landlord's witness stated that he is out working most of the time and has not observed the Tenant's dogs although he was aware that the Tenant had many dogs.

The Tenant explained that he had cut down the large pine trees outside of the rental property but he had done this because the trees were coming dangerously close to the house. The Tenant submitted that he only cut down four live trees and the remaining ones he cut because they were dead. The Tenant confirmed that he had not informed the Landlord of the danger the trees posed to the property and neither did he get the Landlord's consent to cut them down.

The Tenant denied the Landlord's testimony that he was a drug dealer and had a criminal past. The Tenant also denied using guns or bullets on the property and submitted that if this was true he would be in jail. The Tenant also denied cutting a road into the property using his vehicle.

In relation to the fire incidents testified to by the Landlord, the Tenant admitted that he had caused a small fire on July 2, 2014. The Tenant testified that by the time the fire staff had attended the scene he had extinguished the fire and no further action was taken. When the Tenant was asked why the fire manager had written in his letter that the occupants at the property had been neither helpful nor cooperative during their response to both incidents, the Tenant testified that he explained to the fire staff what happened and there was nothing further to say to them.

When the Tenant was asked about the fire incident of September 21, 2014, the Tenant denied being anywhere near the rental property and submitted that there is no evidence to show that he started the fire and that he should be held liable for the costs imposed on the Landlord. The Tenant testified that he was not at the property and the only people who were there were his girlfriend and the Landlord's son. The Tenant explained

that he got a call from his girlfriend who informed him that there was a fire which must have been reported by a neighbour.

The Tenant called his girlfriend to the hearing as a witness who testified that the Tenant was not present at the rental property at the time the fire started on September 21, 2014.

The Landlord's witness testified that he was present at the property on September 21, 2014 but he was sleeping and was awoken by the fire incident.

The parties were given a final opportunity to provide closing arguments and make any final submissions to me, but none were made and the hearing concluded.

Analysis

An early end of tenancy is an expedited and unusual remedy under the Act and is only available to the Landlord when the circumstances of the tenancy are such that it is unreasonable or unfair to a Landlord or other residents to wait for a notice to end tenancy to take effect, such as a notice given under Section 47 of the Act for cause.

In such an Application, the Landlord bears the burden of proof which must be satisfied on the balance of probabilities. As a result, I have analysed the evidence of both parties and make my findings based on the balance of probabilities as follows.

Section 56 (2) of the Act provides the circumstances in which a Landlord may apply to end the tenancy early.

The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(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*

[Reproduced as written]

In relation to the Landlord's allegation that the Tenant has a criminal history, I find that the Landlord's evidence in respect to this is hearsay. There is no evidence provided by the Landlord that the Tenant has a criminal history or is involved in any drug activity that has impacted or affected this tenancy or that would justify ending the tenancy.

In relation to the Landlord's evidence that the Tenant had created a dirt road by the continual use of his car over forested land in order to gain quicker access to the main road of the property, I find that the Landlord did not provide sufficient evidence of this. In this case, photographic evidence would have likely proved to be better evidence of this allegation rather than relying on disputed oral testimony alone which is not sufficient to end the tenancy early.

In relation to the Landlord's claim that the Tenant cut down trees without the Landlord's permission, the Tenant did not dispute this and confirmed that he had no permission from the Landlord. A tenant is not permitted to make changes to a rental property without the consent of the landlord. Therefore, I find that the Tenant did cause extraordinary damage to the residential property as these were large pine trees that were beyond the scope of maintenance work the Tenant would be reasonably required to perform in this tenancy. However, this incident occurred at the start of the tenancy in 2013 and I am not satisfied that it is sufficient reason alone to end the tenancy earlier than the effective date of the Notice.

As a result, I turn my mind to the fire incidents. Firstly, I find that the Landlord has been imposed with a large fine as a result of being held responsible for a human caused fire that occurred on September 21, 2014. The fire prevention by-law seeks to assign

responsibility to the owners of properties where it is determined that the fire is human caused. This does not automatically mean that it is the owner that caused the fire.

In assessing the Landlord's allegation that the Tenant caused the fire against the Tenant's submission that he was not anywhere near the rental property at the time the fire occurred, I have considered the parties' witness testimony first. I find that both witnesses who testified during the hearing are related to the parties and therefore, I place little evidentiary weight on their oral evidence.

Instead, I turn my mind to the fire manager's letters dated October 20 and November 20, 2014 to make my findings in this matter. This is because these documents serve as the only independent and reliable evidence in this case. I find that both letters give merit to the Landlord's allegation that the Tenant started the fire on September 21, 2014.

Both letters confirm that the fire was human caused. The first letter of October 20, 2014 clearly shows that there was a previous incident on July 2, 2014. During this incident I note that the fire manager makes mention of the fact that there were **several** occupants at the property. The Tenant did not deny this incident and explained that he had put the fire out before the fire staff had arrived.

In the second letter dated November 20, 2014, the fire manager specifically mentions that the outcome of their investigation "clearly indicates that the tenants on your property were responsible for the fire and the subsequent wildfire". This is the most conclusive evidence that either the Tenant **or** a person permitted by the Tenant on the property caused the fire.

I find that when I analyse the fire manager's letter of November 20, 2014 with the incident of July 2, 2014, the evidence, on the balance of probabilities, suggests that the Tenant has a propensity for lighting fires in contravention of the fire prevention by-laws and was likely the source of the human caused fire of September 21, 2014. This is further supported by the fire manager's comments made in the same letter of November 20, 2014 where he writes that the "official fire investigation revealed more than a dozen individual burn sites located throughout the property".

Furthermore, I find that the fire manager's letter dated November 20, 2014 also makes mention of the discovery of a bullet riddled propane cylinder on the property. This supports the Landlord's allegation that the Tenant has firearms on the property.

The Tenant denied being at the rental property during the September 21, 2014 fire and submitted that the only parties that were present were his girlfriend and the Landlord's

son. I find it highly unlikely that the Landlord's son would cause such an extensive fire and there is no evidence provided to even suggest that the Landlord's son caused it. I find that the Tenant's witness testimony is not independent or sufficient alone to prove that the Tenant was not present at the time of the fire or that there were other occupants at the rental property that caused it.

Based on the foregoing, I find that the Landlord has presented sufficient evidence, on the balance of probabilities, to show that the Tenant or a person(s) permitted by the Tenant on the property caused extraordinary damage to the rental property and has put her property at significant risk. I also find that this has also seriously jeopardised a lawful interest in the property because the Landlord is now being penalised with a large financial penalty as a result of the Tenant's actions.

Accordingly, I find that the tenancy must end immediately to prevent any further incidents from occurring. As a result, the Landlord is granted an Order of Possession which is attached to the Landlord's copy of this Decision. This order may be enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the property.

As the Landlord has been successful in her Application, I find the Landlord is entitled to the cost of the filing fee pursuant to Section 72(1) of the Act. As a result, the Landlord is issued with a Monetary Order in the amount of \$50.00 which is enforceable in the Small Claims Court as an order of that court.

Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession effective **two days after service on the Tenant**. The Landlord is also granted a Monetary Order to recover the filing fee.

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 30, 2015

Residential Tenancy Branch

