



Dispute Resolution Services

Residential Tenancy Branch

Office of Housing and Construction Standards
A matter regarding Lookout Emergency Aid Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

ET

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an early end of the tenancy and an Order of possession without the benefit of a Notice ending tenancy.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

At the start of the hearing the tenant said he did not have the landlord's evidence. The only evidence supplied by the landlord was a copy of a Court order. That evidence was set aside as the tenant was not given a copy of that document as part of the landlord's application. Later in the hearing the tenant confirmed that he had a copy of the Court order before him and he provided permission for review of that evidence.

The tenant confirmed receipt of the hearing documents on April 4, 2015.

Issue(s) to be Decided

Is the landlord entitled to end this tenancy early without the requirement of a Notice to End Tenancy?

Is the landlord entitled to an Order of possession?

Background and Evidence

The tenancy commenced on August 1, 2013. The tenant pays rent on the first day of each month. The rental unit is in a building of 130 units and is run by the non-profit society. The occupants are considered hard to house individuals, who receive supports offered by the landlord. The tenancy is month-to-month.

There was no dispute that on March 24, 2015 allegations were made that the tenant uttered threats and that he was arrested as a result. The tenant was held in custody and released the next day on a Recognizance of Bail issued by a BC Provincial Court Justice of the Peace.

The Recognizance has a number of conditions. Included are conditions that the tenant not go within a two block radius of the rental unit building (except on one occasion with a police officer in order to retrieve personal effects.) The Order also prohibits the tenant from contacting the site manager and two staff members, D.G. and B.C or from attending any residence, workplace or educational facility where those individuals are known to be.

There was no dispute that on March 24, 2015 the tenant was present at a drop-in service providers office and that he made a comment to the staff member at that service. This person was identified during the hearing as C.

During the hearing the landlord raised no objection to the tenant's advocate reading from a widely used electronic record-keeping program which included notes made by C. on March 24 and 25, 2015. A notation made by C. on March 24, 2015 stated the tenant had come into the office and told C. he wanting to (expletive) kill the site manager at his rental building. The next day an amendment was made to this entry, which altered the alleged comment made by the tenant to one where he had said he felt like taking (the site manager's) head off but he realized that was not a good idea.

Landlord staff member M.L. testified that on March 24, 2015 he received a call from C. to report the tenant had threatened to kill the site manager. M.L. asked C. to call the police; there was no evidence that this occurred. Later that night the tenant came to the rental building and began yelling at the staff at the front desk. M.L. stated that earlier he had served hearing documents to the tenant for a hearing scheduled for May 2015. These were posted to the tenant's door. M.L. saw the tenant acting out at the front desk, but left the building as his shift for the day had ended. He was later told by a supervisor that the tenant was punching walls and then arrested.

Witness D.G. is a supervisor for the landlord. D.G. stated they had issued a 1 month Notice ending tenancy for cause and then applied for a hearing as they believe the tenant is posing a health and safety risk. D.G. was present on March 24, 2015 when he was informed the tenant was at the front desk yelling and screaming and being difficult. The tenant then came out of the elevator and saw D.G. The tenant had the May 2015

hearing papers that had been posted to his door and he threw them at the D.G. The tenant was yelling, screaming and became aggressive. The tenant told D.G. he would become a health and safety risk. D.G. tried to reason with the tenant, telling him he could lose his right to rent from BC Housing. The tenant was pounding the wall and as he went up in the elevator he could be heard pounding the elevator walls.

D.G. then called the police and told them they had received notice of a threat made against the manager. D.G. had become aware of this alleged threat one hour before his encounter with the tenant. The police attended at the building. D.G. explained to the police that his work with the tenant over the past 2 years led him to believe that the threat could pose a danger. The tenant was then arrested.

D.G. mentioned that they have suspected the tenant of lighting at least 5 fires in the building but they do not have proof in support of this allegation. The landlord said they have not discussed these allegations with the tenant.

The tenant was provided with an explanation of section 56 of the Act and the basis for obtaining an Order of possession without the benefit of a Notice ending tenancy.

The tenant confirmed that on March 24, 2015 he attended a support program at a drop-in centre when he told C. that he felt like ripping the site manager's (expletive) head off and stuffing it down his throat. The tenant said he is not so stupid as to have meant this and that he values his position on an advisory committee, which could be placed at risk. C. did not say anything to the tenant about his comment; he did make entries into an electronic system that tracks mutual clients.

The tenant explained that later on March 24, 2015 he had gone out and returned to his rental building a short time later to find the May 2015 hearing documents on his door. He did become agitated and began to look for D.G. When he came out of the elevator staff member B.C. was present and he told her to get out of his face. The tenant admitted to "throwing a 10 minute tirade" and agrees he threw the papers on the floor. He said that was the first he had heard of an allegation that he was a fire-starter. The tenant said he was arrested and released the next day.

The tenant's assistant, with the agreement of the landlord, looked at the notes that had been placed in the mutual electronic record-keeping system by C. On March 24, 2015 the entry is recorded as the tenant saying he wanted to kill the site manager. The next day another entry was made in the system by C. which amended the previous day's notes, now stating the tenant had said he felt like ripping the site manager's head off but realized that was not a good idea.

The tenant said if the landlord is so frightened of him he does not understand why, since the bail conditions were imposed on March 24, 2015, the landlord has approached him on two occasions. One time the landlord shook his hand and on the other occasion he told the tenant he was sorry about what had occurred. The tenant said this did not seem to be something a person would do who was scared for their life.

The tenant was able to ask questions of the landlord and staff present during the hearing.

The female staff member who was allegedly threatened and the person who is alleged to have heard the threat were not available during the hearing. During the hearing both parties attempted to reach the drop-in centre worker C., but he could not be located during the hearing.

Analysis

In order to establish grounds to end the tenancy early, the landlord must not only establish that he has cause to end the tenancy, but that it would be unreasonable or unfair to require the landlord to wait for a notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the testimony of the landlord and his witnesses, I find that the landlord has not met that burden.

An application to end a tenancy early must set out reasons supported by section 56 of the Act.

Application for order ending tenancy early

56 (1) *A landlord may make an application for dispute resolution to request an order*

(a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [landlord's notice: cause], and

(b) granting the landlord an order of possession in respect of the rental unit.

(2) *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
(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.
(3) If an order is made under this section, it is unnecessary for the landlord
to give*

(Emphasis added)

I have considered the weight of the alleged comments made by the tenant to a staff member of a drop-in centre and the absence of evidence that C. informed the police of the alleged comments at the time they were made. Further, when staff member D.G. was made aware of the alleged comments he did not immediately call the police to report the alleged threat. It seems reasonable to have expected the drop-in staff member and the housing staff member to have called the authorities to report what is being described as a real threat against the site manager. However, that did not occur until later in the day, after the tenant caused a disturbance in the building.

There is no dispute that the tenant did cause a disturbance in the building later on March 24, 2015. The tenant described a 10 minute tirade that he had and also describes telling the female staff member to “get out of his face.” I find that the behaviour described to have occurred in the rental unit building on March 24, 2015 was inappropriate, but not of the degree that the tenancy should end without the benefit of a Notice ending tenancy. The landlord has said that they provide housing for hard to house individuals; therefore, it does not seem unreasonable that some outbursts may occur. It is not appropriate for a tenant to enter into a 10 minute tirade or to tell staff to get out of their face; however, I find that behaviour does not, on the balance of probabilities, support ending a tenancy without the benefit of a Notice ending tenancy.

During the hearing the only confirmation of what may have been said by the tenant on March 24, 2015 were the comments recorded in notes on an electronic system. The notes made on March 24th and the additional entry made on March 25, 2015. It appears that the drop-in centre staff person may have been intending to place less urgency on the comments alleged to have been made by the tenant by adding the comments on March 25, 2015. I do not know this is a certainty as C. was not present at the hearing and could not be questioned.

When attempting to end a tenancy without the benefit of a Notice ending tenancy I would expect the landlord to have attempted to have all parties present to provide testimony. This allows the person accused to ask questions of the accuser. In this case I find the most critical testimony would have come from the person who heard the comment. No effort was apparently made by the landlord, who has the burden of proving the reasons the tenancy should end, to reach the witness until the hearing was underway.

I find that the absence of an immediate report to the police by C. and D.G. is inconsistent with the reported sense of urgency and alleged threat posed by the tenant. If the landlord had demonstrated an approach consistent with the need to immediately

end the tenancy, such as a call to the police as soon as they were aware of the alleged threat I may have been convinced that it would be unfair for the landlord to wait for a 1 month Notice to come into effect. Further, the landlord did not dispute the tenant's submission that he has approached the tenant on two occasions since the Recognizance has been issued. It would make sense that if the landlord believed the tenant poses a serious risk that he would not approach the tenant; particularly given the tenant's order to not have contact with the landlord.

Therefore, even though there may well be some cause for ending this tenancy, I find that the reasons presented by the landlord fail to support the ending of the tenancy without the benefit of a Notice ending tenancy. I find, on the balance of probabilities that it would not 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 in the attempt to end this tenancy.

The Recognizance has been issued in relation to a charge of uttering threats to cause death or harm; however, that charge is not proven. Until the Court sees fit to alter the tenant's release conditions the tenant will be bound by those conditions. This means that the tenancy will continue until it is ended in accordance with the legislation but that only the Court can allow the tenant to return to the rental unit and be in proximity to the building.

I have made no finding in relation to the weight of any Notice ending tenancy; that may be decided at some future hearing.

Conclusion

The application is dismissed.

The tenancy will continue until it is ended in accordance with the legislation.

This decision is final and binding and 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: April 14, 2015

Residential Tenancy Branch