



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET,

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act, (the “Act”), to end the tenancy early and obtain an order of possession.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The landlord CL, provided all evidence and testimony on behalf of the owners.

Preliminary matter

At the outset of the hearing the landlord’s application was amended to remove HB as a respondent. HB is the boyfriend of the tenant and is not a party to this tenancy.

At the outset of the hearing the tenant indicated that they were unable to view the digital evidence provided by the landlord.

The landlord indicated that the tenant received the digital evidence twice. The landlord stated that they received the first memory stick back from the tenant and their evidence was deleted and replaced with evidence that the tenant’s is relying upon at a hearing scheduled for June 1, 2015.

The landlord stated that when the tenant first told them that they could not play the video, they pulled out their laptop and played the video for the tenant while they sat together on the front stairs of the building. The landlord indicated that the tenant was then provided with a second memory stick of the video.

The tenant acknowledged that they sat with the landlord on the front stairs; however do not recall seeing the video.

In this case, I accept the landlord's testimony over the tenant's that the tenant received two copies of the digital evidence and that the video footage was reviewed by the tenant on the landlord's computer when they sat together on the stairs. I find the landlord's version has the ring of truth. The tenant acknowledged that they sat on the stairs with the landlord, but provided no details of what occurred or what was said. Therefore, I have allowed the memory stick to be submitted as evidence.

Issues 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 they purchased the property due to a court forfeiture order.

The landlord testified that the tenant has engaged in illegal activity by allowing their boyfriend HB, who also uses a drug name, to continue to conduct drug trafficking from the rental unit. The landlord stated that HB was evicted from the building on May 8, 2014, for drug trafficking. Filed in evidence is a copy of the decision dated May 8, 2014, which supports the landlord's testimony.

The landlord testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause on March 11, 2015. The landlord stated that the tenant's application to cancel the notice was heard on May 8, 2015. On May 9, 2015, the Arbitrator dismissed the tenant's application and order of possession was granted to the landlord.

The landlord testified the tenant filed an application for review consideration which was granted and the original decision and order of May 9, 2015, were suspended until a new hearing is conducted which is currently scheduled for June 1, 2015.

The landlord testified that the drug trafficking is continuing and is putting the landlord's property at significant risk and is at risk of another civil forfeiture proceedings if the drug trafficking is not rectified.

The landlord testified that on April 19, 2015, at 11:30 pm they attended at the building and they discovered two adult males, who were not occupants of the building in the hallway. The landlord stated that they believe that one of the males had just purchased drugs from the tenant's rental unit and injected the drugs in the alcove as heroin needles were found. The agent stated that when they questioned the male they indicated that HB, gave them permission to be there.

The landlord testified that the second male was at the end of the hallway and immediately told the other male not to speak as they were being recorded. Both males exited the back entrance, rather than the front door. The landlord stated that the second male was likely a lookout as they have learned this is common when drug transactions are taking place.

The landlord testified that they then went to the tenant's rental unit; however an unidentified female answered the door and indicated HB and the tenant were not there, but they would be back shortly.

The landlord testified that a male voice was also heard asking the female who was at the door and they immediately were able to identify this person as CK as their voice is very distinguished. The landlord stated that CK was also evicted in 2014, for assaulting another occupant in the building and verbal threatening the landlord. The landlord stated that CK is ordered by a court undertaking to stay away from the building. Filed in evidence is a copy of a court undertaking, supporting the landlord's testimony.

The landlord testified that it would be unfair to allow the tenancy to continue as the tenant's action of allowing HB to continue to traffic drugs, and the violent history of CK is putting their property at significant risk.

The tenant testified that on April 21, 2015, they were at the rental unit all day, except at lunchtime when they quickly went to the store. The tenant indicated that they were at the store when the landlord attended the rental unit to provide a copy of notice of hearing for today's hearing.

The tenant testified that they admit their boyfriend was evicted; however, they have not been in the building since the eviction occurred in 2014. The tenant stated that they did have CK, in their unit one time, as they were not aware of the assault incident.

The tenant was informed that the date the landlord referred to was the 19th of April 2015, and not the 21st of April 2015. The tenant was unable to provide any version of the events that occurred on April 19, 2015, and they indicated that they were not there at the time.

Although the tenant had their witness provided testimony, the witness was not providing any relevant information to the matter before me.

Analysis

Section 56 of the *Act* allows a landlord to request an order of possession to end the tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under Section 47 (1 Month Notice to End Tenancy for Cause) if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - 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, or
 - 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 rental unit or residential property;
- b) And 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.

I am satisfied, based on the testimony and evidence provided by the landlord that the tenant has seriously put the landlord property at serious risk by allowing drug trafficking to occur in the rental unit on the night of April 19, 2015.

The video shows on April 19, 2015, that two adult males were in the hallway of the building. One male indicated that they had permission from HB to be there and they point to the tenant's rental unit, needles were found in the alcove where the male had just exited. The second male was waiting down the hallway immediately said to the other male to stop talking as they were being recorded, this action shows that it is more likely than not that they were there for an unlawful purpose.

Further, the tenant is aware that drug trafficking has been alleged by the landlord to be taking place in their rental unit. On May 8, 2014, both parties participated in dispute resolution hearing and on May 9, 2015, the Arbitrator granted the landlord an order of possession for the tenant's rental unit. Although the decision and order was suspended until a new hearing could take place on June 1, 2015. I find it unreasonable that the tenant would not have any knowledge of what occurred in their rental unit on April 19, 2015 and further jeopardise their tenancy. The tenant is responsible at all times for the action of their guests.

Further, I also do not accept the testimony of the tenant that HB has not been on the property since they were evicted for drug trafficking in March 2014. The male in hallway indicated that HB gave them permission to be there and the unidentified female who opened the tenant's rental unit door indicated that HB and the tenant would be back shortly. I find it highly unlikely that these two people would refer to HB, if in fact HB had not been on the property.

Therefore, I find on the balance of probability that the tenant has placed the landlord's property at significant risk, by allowing illegal activities to take place.

I also find the landlord has established, by their testimony, that it would be unfair to the landlord to have to continue to wait for the review hearing to occur on June 1, 2015, as this simply could be an attempt to delay the processes.

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

Conclusion

The landlord's application to end tenancy early and obtain an order of possession is granted.

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: May 12, 2015

Residential Tenancy Branch

