



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ET and OPT

Introduction

This hearing was convened in response to cross applications.

On May 04, 2015 the Landlord filed an Application for Dispute Resolution in which the Landlord applied to end the tenancy early and for an Order of Possession.

The Agent for the Landlord stated that on May 08, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were posted on the door of the rental unit and sent to the rental unit, via registered mail. He was unable to cite a tracking number for the documents sent by Canada Post.

The Agent for the Landlord stated that Canada Post delivered the aforementioned mail to the incorrect address and that the mail was subsequently returned to him by the mail carrier. He stated that he personally served this package to the Tenant on May 12, 2015.

The Advocate for the Tenant stated that the Tenant was aware that the Landlord had filed an Application for Dispute Resolution.

In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

On May 19, 2015 the Landlord submitted five pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that these documents were not served to the Tenant. As the documents were not served to the Tenant they were not accepted as evidence for these proceedings.

On May 21, 2015 the Tenant filed an Application for Dispute Resolution in which the Tenant applied for an Order of Possession.

The Advocate for the Tenant stated that on May 21, 2015 the Application for Dispute Resolution and the Notice of Hearing were personally delivered to the Landlord's place of business. The Agent for the Tenant acknowledged receipt of these documents and I therefore find that they have been served to the Landlord in accordance with section 88 of the *Act*.

Preliminary Matter

The Advocate for the Tenant stated that she does not know why the Tenant did not attend the hearing. She stated that she does not have authority to act as an agent for the Tenant.

As the Tenant did not attend the hearing or authorize the Advocate for the Tenant to act on his behalf, I find that he did not diligently pursue his Application for Dispute Resolution. I therefore dismiss his Application for Dispute Resolution, without leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to end this tenancy early and to an Order of Possession on the basis that the tenancy is ending early, pursuant to section 56(1) of the *Residential Tenancy Act (Act)*?

Background and Evidence

The Agent for the Landlord stated that this tenancy began on April 06, 2015. The Advocate for the Tenant did not know when the tenancy began.

The Agent for the Landlord #2 stated that the Tenant was anxious and agitated when he was shown the rental unit on April 03, 2015, prior to the start of the tenancy.

The Agent for the Landlord #2 stated that on April 20, 2015 the Tenant was bringing property into the residential complex without having the property examined for bug infestation. Upon being advised that the property needed to be examined for bed bugs the Tenant became argumentative and verbally aggressive with staff.

The Agent for the Landlord #2 stated that an occupant of the residential complex, whom I will refer to as "Occupant K", reported being assaulted by the Tenant on, or about, April 28, 2015.

In an email, dated May 02, 2015, a staff member reports that:

- "Occupant K" showed the staff member a bruise on her arm which she reported happened when the Tenant squeezed her arm;
- "Occupant K" showed the staff member a bruise on her midriff which the occupant stated happened when the Tenant punched her;

- the assault was reported to police but “Occupant K” is too frightened of the Tenant to pursue charges;
- “Occupant K” is feeling suicidal;
- on May 02, 2015 “Occupant K” was transported to the hospital for psychiatric care; and
- the Tenant has property belonging to “Occupant K” in his rental unit, which she must ask his permission to use.

In an incident report, dated May 01, 2015, a second staff member reports that:

- “Occupant K” reported that she met the Tenant on April 20, 2015 and became friendly with him;
- “Occupant K” does not recall the specific date but she agreed to allow the Tenant to apply pressure to her back for therapeutic reasons;
- “Occupant K” does not recall the specific details, as she had been under the influence of alcohol, but she believes she fought with the Tenant and that she was bruised as a result of the altercation;
- the Tenant has taken many of “Occupant K’s” personal belongings into his rental unit; and
- the Tenant is refusing to return the personal items until “Occupant K” gives him money.

The Advocate for the Tenant stated that she has no knowledge of any of the aforementioned incidents.

The Agent for the Landlord stated that on May 18, 2015 the Landlord prevented the Tenant from accessing the residential complex by cancelling his electronic access card. He stated that the Landlord prevented the Tenant from accessing the complex because they were seriously concerned for the safety of the occupants of the residential complex.

The Agent for the Landlord stated that the decision to prevent the Tenant from accessing the rental unit was, in part, as a result of a report they received on May 16, 2015. On May 16, 2015 an occupant of the rental unit, whom I will refer to as “Occupant D” reported that on May 15, 2015 she agreed to receive a “healing massage” from the Tenant. She reported that she suffers from narcolepsy and that she fell asleep during the massage. She reported that when she awoke she awoke she “felt uncomfortable around her anus and when she asked the Tenant if he had touched her sexually he responded that it was “all relative” “Occupant D” reported that she believes there are small tears around her anus.

The Advocate for the Tenant stated that the Tenant told her he did not assault “Occupant D”.

The Agent for the Landlord stated that the decision to prevent the Tenant from accessing the rental unit was, in part, as a result of a report they received on May 16, 2015. On May 16, 2015 a person who delivers medication to occupants of the residential complex reported that she went to the rental unit with the Tenant and that he subsequently prevented her from the leaving the room by applying pressure to the door.

The Advocate for the Tenant stated that she has no knowledge of this incident.

Analysis

Section 56(1) of the *Act* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the *Act* and a landlord may apply for an Order of Possession for the rental unit.

Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

On the basis of the undisputed evidence, I find that the Tenant injured a female occupant of the residential complex on, or about, April 28, 2015. Although one staff

member reports that "Occupant K" is not certain how the injuries occurred, the other staff member reports that "Occupant K" reported that the injuries were the result of being hit and having her arm squeezed. On the basis of the location and nature of the injuries, I find it entirely possible that the bruises were the result of an altercation.

Even if these injuries were the result of "therapeutic" contact, the resulting injuries exceed what is reasonable when the therapy is being applied by an untrained practitioner, and there is no evidence that the Tenant has any medical training.

I therefore find that that the Tenant has seriously jeopardized the health and safety of another occupant of the residential complex, which are grounds to end the tenancy in accordance with section 56(2)(a) of the *Act*.

On the basis of the undisputed evidence, I find that the Tenant took personal property from "Occupant K" and refused to return it unless she gave the Tenant money.

I therefore find that that the Tenant has significantly interfered with or unreasonably disturbed another occupant of the residential property, which are grounds to end the tenancy in accordance with section 56(2)(a) of the *Act*.

Section 56(2)(b) if the *Act* authorizes me to grant an Order of Possession in these circumstances only if 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.

On the basis of the report made by "Occupant D", I find that the Tenant touched her inappropriately on May 15, 2014. Although "Occupant D" does not specifically recall how her injuries occurred, I find it reasonable to conclude that the injuries to the Tenant's anus cannot be attributed to a consensual massage.

In reaching this conclusion I have placed little weight on the Advocate for the Tenant's testimony that the Tenant told her he did not assault "Occupant D". I find this to be hearsay evidence, which is fraught with frailties. Without testimony from the Tenant to explain how the injuries occurred, I find it reasonable to conclude that the injuries were the result of inappropriate force.

On the basis of the report made by the person who delivers medication to the residential complex, I find that on May 16, 2015 the Tenant prevented her from exiting his rental unit when she wished to do so.

On the basis of the incidents that occurred on May 15, 2015 and May 16, 2015, I find that the Tenant's presence in the residential complex after May 04, 2015, when the Application for Dispute Resolution was filed, continued to seriously jeopardize the health or safety or a lawful right or interest of another occupant and of a person providing services to occupants of the residential complex. Given the nature of the health/safety risks, I find that it would be unreasonable for the Landlord to wait for a notice to end the tenancy under section 47 of the *Act* to take effect. I find that the security of females in the residential complex would be compromised if the Tenant remained in the complex. I therefore find that the Landlord has the right to end this tenancy early, in accordance with section 56 of the *Act*.

I note that I have made no ruling on whether the Landlord acted lawfully when the Landlord prevented the Tenant from accessing the residential complex after May 18, 2015, as that is not an issue in dispute at these proceedings.

Conclusion

I grant the Landlord an Order of Possession that is effective immediately. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Dated: June 03, 2015

Residential Tenancy Branch

