



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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.

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 and received by the parties, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

The parties confirmed receipt of all documents within sufficient time.

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

This tenancy commenced on October 1, 2013, rent is \$650.00 due on the first day of each month. The agreement was signed by the tenant and the previous property owner.

In April 2015 ownership and the tenancy transferred to the current landlord. The landlord lives in the upper portion of the home; the tenant lives in the basement unit.

There were written submissions made that indicated that since the purchase of the home the parties have been in a dispute over the provision of cable services to the tenant.

The landlord cited three reasons for the May 15, 2015 application requesting an early end to the tenancy.

The landlord alleged the tenant has cut the cable and telephone line; which resulted in a disconnection to the landlord's security system. This occurred on May 11, 2015. The landlord heard the tenant running up and down the stairs, so he knew it was the tenant who cut the cable. The cable box is outside the garage door. A photograph of the cable box and damaged cable was submitted as evidence. The telephone company said that the cable had been pushed back into the wall. The landlord said that he called the police who told him he should take steps to end the tenancy. The tampering with the security system resulted in a lack of safety for the landlord's family.

The landlords' written submission indicated that after the tenant was given a 10 day Notice to end tenancy for unpaid rent on May 3, 2015 he was then served the hearing documents on May 11, 2015. At this time the landlord submits the tenant threatened to vandalize the property. This matter was not raised during the hearing and the landlord chose not to have his witness testify. The witness's written statement issued on May 14, 2015 indicated that he was present on May 3, 2015 when the tenant was given the eviction Notice. The witness writes that on May 3, 2015 the tenant said he would reduce rent for work completed on the unit.

The landlord submitted a photo of the side view mirror on his car. The mirror was damaged and the landlord suspects the tenant caused the damage. The damage occurred on May 17 or 18, 2015.

The tenant bangs on the walls when the landlord vacuums and yells through the wall at the landlord's wife; using expletives and derogatory terms. The landlord's wife said that the tenant plays music that makes the home vibrate; that he slams doors which scares their children and that he swears so the children can hear. The tenant will play loud music until 11 p.m.

The tenant said that he did not cut the cable and was not aware it had been cut until the hearing documents were served. The police have not talked to him about this allegation.

The tenant said he did not damage the landlords' vehicle and that it is parked inside the garage most of the time.

The tenant agreed that he plays music up to 11 p.m. The police came to his door one night at around 10:30 p.m. and said that the music was not a problem and that quiet hours should begin at 11 p.m.

The tenant submitted evidence related to an on-going dispute over cable service submission. A May 16, 2015 unsigned letter from the past owner/landlord was supplied by the tenant as evidence the past owner declares cable was a term of the tenancy. The current landlord submitted that this letter was fraudulent as the past owner has told him he did not write the letter. The landlord points out the May 16, 2015 letter is unsigned.

The landlord's written submission indicated that on May 25, 2015 the tenant told the landlord he would burn his house down. However, the landlord did not raise this serious allegation during the hearing and the tenant did not respond to it.

The landlord confirmed that he has attempted to have the tenant sign a new tenancy agreement; the tenant has not signed.

Analysis

In order to establish grounds to end the tenancy early, the landlord must not only establish that they have 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 I find that the landlord has met this burden.

Section 56 of the Act sets out the reasons upon which an early end of tenancy must be based:

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

The landlord suspects the tenant has cut the cable line and broken the mirror to his vehicle. The landlord has only suspicion, but feels that as a result of on-going conflict

with the tenant in relation to the cable service that the tenant is responsible. I find this reasoning compelling. The landlord purchased the property in April and within a short period of time the cable service was vandalized; all while a dispute over cable was on-going.

I must assess whether the tenant has engaged in behaviour that meets the standard set out in section 56 of the Act for eviction and that it would be unfair or unreasonable for the landlord to wait for a notice ending tenancy to come into effect. Given the dispute in relation to cable service it does appear highly coincidental that the cable service was vandalized, followed by the vehicle mirror.

I have rejected the submission that the tenant vandalized the mirror of the vehicle due to the absence of any proof or link to the other dispute that is on-going between the parties.

The tenant denies that he is swearing and banging the walls; however, I found the landlord's spouses' testimony persuasive. This testimony was measured and thoughtful. There was no evidence that the tenant has been given any kind of warning in relation to this behaviour; something I would expect before eviction is pursued.

I question the credibility of the tenant, who denied that he has engaged in the use of foul language; an admission which, on its own, would not have supported an end of tenancy based on this application. I preferred the landlord's spouse's testimony, as unrehearsed and genuine versus the tenant who simply denied engaging in that behaviour.

I have then considered whether the cable vandalism would form sufficient cause to end the tenancy due to extraordinary damage to the residential property. It is the testimony given in relation to the cable service vandalism that I find most convincing and difficult to assign to anyone other than the tenant.

I find that even in the absence of a police investigation the tampering with the cable service that is in dispute between the parties, points to the tenant as the source. Based on the on-going dispute over the provision of cable service since the purchase of the property in April 2015 and the vandalism on May 11, 2015, I find on the balance of probabilities that responsibility for the vandalism was due to the actions of the tenant. I can draw no other reasonable conclusion and have done so taking into account the tenant's credibility, the timing of the change in landlord and dispute over the provision of cable services. Put together the evidence points to the tenant as the person who vandalized the cable service.

Black's Law Dictionary, 6th edition, defines extraordinary, in part, as:

"out of the ordinary; exceeding the usual, average or normal measure or degree; beyond or out of the common order, method, or rule....remarkable; uncommon..."

Vandalism is not part of any common order expected of a tenant during a tenancy. Therefore, based on the cable vandalism I find, pursuant to section 52 of the Act, that the landlord has proven on the balance of probabilities that the tenant caused extraordinary damage to the residential property.

As I have assigned responsibility for the damage to the tenant and determined it was extraordinary damage I find that the tenancy must end.

Given the damage caused by the tenant I find it would be unreasonable and unfair for the landlord to wait for a 1month notice to end tenancy for cause to come into force.

Therefore, I find that the landlord is entitled to an Order of possession.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The landlord is entitled an early end of tenancy and has been issued an Order of possession.

This decision is final and binding on the parties, unless otherwise provided under the Act, 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: June 11, 2015

Residential Tenancy Branch

