



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE KETTLE SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an early end to this tenancy and an order of possession pursuant to section 56; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord's agent attended the hearing and confirmed he had full authority to act on behalf of the landlord. The landlord elected to provide two witnesses in support of the application. The tenant attended the hearing. The tenant was assisted by his advocate. The tenant elected to call one witness. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The agent testified that the landlord served the tenant with the dispute resolution package on 28 October 2015 by registered mail and on 15 November 2015 in person. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an early end to this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties and witnesses, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 24 March 2015. The parties entered into a written tenancy agreement that day. Monthly rent of \$475.00 is due on the first. The landlord continues to hold the tenant's security deposit in the amount of \$237.50, which was collected at the beginning of the tenancy. The tenant's rent is paid directly by the province and his rent due 1 December 2015 has been paid.

The rental unit is located in a residential property operated by the landlord in conjunction with the City of Vancouver in order to provide housing to persons who are at risk of homelessness.

The agent testified that the tenant is believed to be selling illicit drugs to other occupants of the residential property. The agent testified that he was told by the tenant that he is not actually selling drugs, but rather acting as a courier for occupants that are unable to get their drugs themselves. The agent admits that the landlord's staff has not actually seen drugs on the tenant. The agent admits that only harm reduction supplies have been seen thus far. The tenant admits that he was involved in a "transaction" with JP.

The agent testified that an incident that occurred on 26 October 2015 at approximately 0200 precipitated this application by the landlord. The agent testified that the tenant had sold drugs to another occupant of the rental unit, JP. I was provided with an incident report dated 25 October 2015. That report sets out:

[JP] approached staff to talk about an incident with [the tenant]. [JP] brought some drugs from him last night, she says, and he gave her half of what she paid for. He apologized and said he would "make it right", so she went to his apartment where he grabbed her by the hair and pulled it, then pulled her right out of his suite.

I was provided with a letter dated 26 October 2015 from the landlord to the tenant. That letter sets out that the tenant is banned from going to the second or third floors and that he is not to have contact with JP.

JP testified that she had been trying to contact the tenant about returning JP's money. JP testified that the tenant texted JP to come to the rental unit. JP testified that when

she got to the rental unit DL answered the door and told JP that the tenant was in the shower. JP admitted that DL told JP that it was not a good time. JP testified that she entered the suite as the door was opened to her and she had been involved down to the rental unit. JP testified that the police were called in response to this incident.

The tenant testified that as DL was leaving the rental unit JP showed up at the door and pushed her way in. The tenant testified that he exited the bathroom where he was showering clothed only in a towel. The tenant admitted that he had texted JP earlier, but stated that he had the right to change his mind. The tenant testified that he has been harassed by JP. The tenant testified that he walked towards JP and put his hand on JP's shoulder to steer her towards the door. The tenant testified that his hand got stuck in JP's hair. The tenant admitted that JP's complaint was that she had been "shortchanged" on a "transaction".

DL testified that she was visiting the tenant in the rental unit. DL testified JP attended and indicated that she wanted to come into the rental unit. DP testified that she told JP that it was not a good time. DL testified that JP pushed her way into the rental unit. DL testified that the tenant indicated to JP that it was not a good time and that they could talk tomorrow. DL testified that JP would not leave. DL testified that she observed the tenant put his open hand on JP's shoulder and push JP towards the door.

It is alleged by the landlord that the tenant has been harassing JP since the incident. JP testified that the tenant has been trying to talk to her. The agent testified that other occupants have made complaints and are fearful, but do not wish to be named. The agent testified that there have been other issues in the tenancy including noise complaints and failure to comply with the residential property pest control protocols. The agent testified that the tenant will adopt an aggressive approach with both the agent and other staff members.

The tenant testified that his interactions with the agent leave the tenant feeling stressed, belittled, and judged. The tenant testified that he feels unfairly targeted.

The agent testified that the tenant has breached various conditions that were set out in the various letters sent on behalf of the landlord.

CG is an employee of the landlord. CG testified that when she was in the dining room / kitchen area she heard the tenant speaking loudly and yelling into the dining area. CG testified that she observed JP to be shaking but could not identify what was said. CG testified that she and JP were the only people in that room. CG testified that JP told her that it was the tenant. CG testified that, in general, the tenant's conduct is worrisome.

CG reported that other occupants said they did not feel safe in the building with the tenant there.

The tenant testified that he was looking for a staff member and was yelling to try to find the staff member, but denies harassing JP.

The advocate submitted that, as this is a supportive housing situation, the landlord has an obligation to accommodate its tenants to a higher degree. Further, the advocate submitted that as the tenant is a hard to house individual that he would require as much time as possible to leave and should be given until the end of the month to find housing.

The agent repeatedly expressed concern for the other occupants in the building and requested that the tenancy end as soon as possible. In particular, the agent submitted that the landlord would return the tenant's rent for December and asked that I grant an order that was effective as soon as possible.

I was provided with copies of incident reports. In a report dated 1 July 2015 a staff member notes a conflict with the tenant at 0400.

In a report dated 31 August 2015, a staff member notes that the tenant swore at the staff member when told he could not enter the residential property with two garbage bags. The staff member noted that the tenant was bringing in harm reduction supplies for other occupants. I was provided with a letter dated 31 August 2015 that sets out that tenant was abusive towards the staff member and cautions the tenant about this conduct.

I was provided with a letter dated 10 September 2015 from the landlord to the tenant. That letter notes that the tenant was aggressive towards a staff member attempting to enforce the landlord's pest control policy.

I was provided with a letter dated 25 September 2015 from the landlord to the tenant. That letter notes that the police were called in response to a noise complaint involving multiple occupants of the residential property including the tenant. This noise was in relation to a conflict about money.

I was provided with a letter dated 8 October 2015 from the landlord to the tenant. The landlord cautioned the tenant that involvement in illicit drug trade is not acceptable and that verified conduct could result in an end to the tenancy.

Analysis

Evidence Regarding Unnamed Complainants

The BC Supreme Court held in *Stelmack v Commonwealth Holding Co. Ltd*, 2013 BCSC 342 that anonymous letters may not be relied upon owing to the high standard of procedural fairness owed to tenants facing a notice to end tenancy for cause. For the purposes of this hearing, I informed the parties that I would be giving little weight to the second-hand allegations of the tenant's misconduct without named complainants.

Early End to Tenancy

In accordance with section 56 of the Act, in receipt of a landlord's application to end a tenancy early and obtain an order of possession, an arbitrator may grant the application where the tenant has:

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

In addition to showing at least one of the above-noted causes, the landlord must also show why it would be unreasonable or unfair to the landlord to wait for a 1 Month Notice to take effect.

A one month notice to end tenancy for cause is the standard method of ending a tenancy for cause. An order to end tenancy early pursuant to section 56 requires that there be particular circumstances that lend urgency to the cause for ending the tenancy. That is the reason for the requirement that the landlord show it would be "unreasonable or unfair" to wait for a cause notice to take effect.

The tenant was cautioned by the landlord in early October that involvement in illicit drug trade was not acceptable and the landlord considered verified involvement in the illicit drug trade to be grounds to end the tenancy.

The tenant and JP were involved in an altercation in late October. There is general agreement as to what occurred in the course of this incident:

- The tenant procured illegal drugs for JP.
- JP felt that she had been wronged in that transaction.
- JP sought repayment of money she had given to the tenant as part of the transaction.
- JP attempted to contact the tenant.
- JP attended at the rental unit.
- JP was not granted access to the rental unit by DL or the tenant, but did enter the rental unit.
- JP was asked to leave by both DL and the tenant.
- JP refused to leave.
- The tenant used some level of force to remove JP.

There is disagreement over some details of the event:

- JP says that she was invited to come to the rental unit by the tenant. The tenant states that he may have, but stated that he has the right to revoke his consent.
- The landlord says that JP was removed forcibly and in part by her hair. The tenant states that he guided JP from the rental unit by applying force to her shoulder with an open hand.

I do not find the differences in the accounts of that night to be material. The tenant admits to procuring drugs to provide to the resident JP. Whether or not the tenant provided the drugs at a profit or merely received money equivalent to the cost of the illegal drugs does not change the legality of the situation. It is still illegal to provide illicit drugs to another person. I find that the tenant committed an illegal act that precipitated the altercation with JP and that this illegal act caused the events of 26 October 2015. On the basis of JP's testimony, I find that the altercation adversely affected the safety or physical wellbeing of JP, who is another occupant of the residential property.

The landlord has provided extensive evidence that the severity of tenant's conduct escalated over the course of the tenancy. I accept that it would be unreasonable for the landlord to wait for a 1 Month Notice to take effect as there is a risk of continued illegal activity and unreasonable disruption by this tenant.

On this basis, I grant the landlord's application for an early end to tenancy.

I accept the tenant's submissions that as he is a hard to house individual it will be difficult for him to find housing. I am exercising my discretion to make the order of possession effective 31 December 2015, the last day for which the tenant has paid for his use and occupancy of the rental unit.

As the landlord has been successful in this application, it is entitled to recover its filing fee from the tenant. Pursuant to paragraph 72(2)(b), the landlord may choose to withhold the monetary award from the tenant's security deposit in which case the value of the tenant's security deposit is reduced by \$50.00.

Conclusion

The landlord is provided with the monetary order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: December 09, 2015

Residential Tenancy Branch

