



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on December 15, 2015. The Landlords filed seeking an order to end the tenancy early (ET) and to obtain an Order of Possession.

The hearing was conducted via teleconference and was attended by the Landlord, S.C. M. and the Tenant S.S. Each person gave affirmed testimony. The application listed two applicant Landlords and two respondent Tenants. Therefore, for the remainder of this decision, terms or references to the Landlords or the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

On December 18, 2015 the Landlords submitted 7 pages of evidence to the RTB. The Landlord affirmed that he served the Tenants with copies of the same documents that he had served the RTB. The Tenant acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Landlords' submissions as evidence for these proceedings.

Each party was provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord met the burden of proof to be granted an ET and an Order of Possession?

Background and Evidence

The Landlord and Tenant, S.S. entered into a verbal month to month tenancy agreement that began on March 1, 2014. Rent of \$1,000.00 is payable on the first of each month and on February 23, 2014 the Tenant paid \$500.00 as the security deposit.

The Landlord testified that when he entered into the verbal tenancy agreement with the Tenant she informed him that her boyfriend would be visiting and staying with her on weekends and the occasional week day. He said that she also informed the Landlord that her boyfriend's daughter may be at the unit sometimes as well.

The Landlord submitted that the Tenant's boyfriend showed up with her on March 1, 2014, the first day of the tenancy, and he has occupied the rental unit fulltime ever since. The Landlord stated that he did not approach the Tenant about her boyfriend being there and noted that the Tenant was required to pay 50% of the utilities and the upstairs tenants paid the other 50%.

The Landlord stated that the Tenant was always late paying her rent and her utilities. He asserted that he had family coming to visit so he decided that he would evict the Tenant and her boyfriend so the Landlord's family could reside in the rental unit.

The Landlord testified that the municipality had been working on the road and requested that the fence be removed. On October 14, 2015 the Landlord was at the rental unit removing the front fence. He submitted that he was using a hammer to remove the nails from the fence boards.

The Landlord asserted that during the time he was removing the fence the Tenant's boyfriend had been outside talking with him and watching him work. It was during that time on October 14, 2015 that the Landlord told the Tenant's boyfriend that he would be returning to the unit the next day to serve the Tenant with an eviction notice so his family could stay in the unit.

The Landlord testified that the boyfriend became very upset with him, yelling that the rental unit was his house and the Landlord could not evict him. The Landlord said that he bent down to pick up the hammer that was on the ground in order to leave when the Tenant's boyfriend yelled at him asking if the Landlord was going to hit him with the hammer. The Landlord said he replied no and the Tenant's boyfriend went into the house and came back out with a baseball bat. The Landlord said the Tenant's boyfriend hit him in the thigh with the baseball bat and then hit him a second time in the knee while yelling at the Landlord to drop the hammer. The Landlord stated that he was using the hammer to try to block the bat from hitting him so he refused to drop the hammer for fear that the Tenant's boyfriend would take out his knee with the bat.

The Landlord asserted that he turned away to try and walk away from the Tenant's boyfriend when the boyfriend took another swing at him with the bat knocking the

hammer out of the Landlord's hand. The Landlord said at that point he yelled at the Tenant's boyfriend "what are you going to do now hit me in the head?"

The Landlord said the Tenant's boyfriend put down the bat and started saying he was sorry over and over again. The Landlord stated that he walked up the street to his home while the Tenant's boyfriend continued to follow him saying he was sorry.

The Landlord pointed to his evidence which included two letters from the municipal police department and the hospital which confirm the Landlord sustained injuries from a bat on October 14, 2015. The letters from the police department state that the Tenant's boyfriend had been charged with assault with a weapon. The letters also confirm that the file was still under investigation.

The Landlord testified that he was not aware of the eviction process. He stated that he typed the Tenant a notice from his computer saying that due to the events with her boyfriend and the outstanding utilities the Tenant would have to move out by November 15, 2015. After speaking with the Residential Tenancy Branch (RTB), the Landlord later informed the Tenant she would have to move out by November 30, 2015 as a one month notice would take effect on the last day of the month.

The Landlord asserted that when the Tenant and her boyfriend remained in the rental unit past November 30, 2015 he contacted the RTB again and found out that he was able to apply for an ET application. The Landlord stated that rent has been paid in full; however the utilities remain unpaid.

The Tenant testified that the Landlord's evidence documents had nothing to do with the request to end the tenancy. She argued that the Landlord had told her boyfriend that he was already planning to evict them so the Landlord's evidence has nothing to do with reason for eviction.

After I explained the different types of eviction processes to the Tenant she responded by stating the Landlord's evidence documents were falsified. She argued that the incident which occurred on October 14, 2015, happened in her absence and was still under investigation. Therefore, she said the assault is only alleged and not proven at this point.

The Tenant confirmed that her boyfriend has resided at the property since March 1, 2014. She argued that although she had entered into a verbal agreement with the Landlord which allowed her boyfriend to live there she was the only tenant. She also

stated that she had written up a tenancy agreement and a receipt for her deposit; however, the Landlord refused to sign them.

Prior to conclusion of the hearing I informed both parties that I would be granting the Landlord's application and would be issuing him an Order of Possession.

The Tenant then submitted that she was currently out of town working and would not be home until the end of the Month. She then argued that she would not be home to receive documents or to move out. She confirmed that her boyfriend was home and was still occupying the rental unit.

I informed both parties that the Order of Possession could be served by posting it at the rental unit or upon the Tenant's boyfriend as he was an adult residing with the Tenant.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The *Residential Tenancy Act* defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Therefore, based on the above, I find that the terms of this verbal tenancy agreement, between the Landlord S.C.M. and the Tenant S.S. are recognized and enforceable under the *Residential Tenancy Act*.

An occupant is defined in the *Residential Tenancy Policy Guideline Manual*, section 13 as follows: where a tenant allows a person who is not a tenant to move into the premises and share the rental unit and/or the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a tenancy agreement to include the new occupant as a tenant.

Based on the undisputed evidence before me, I find the Tenant's boyfriend is an occupant and not a tenant, as the Landlord did not agree to rent the rental unit to the Tenant's boyfriend. Therefore, the Order of Possession must be issued in only the Tenant's name.

Section 56(2) of the *Act* stipulates that 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, of the following:

(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.

[My emphasis added by bold text.]

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

I do not accept the Tenant's assertion that the Landlord falsified the letters from the police department or the hospital. Rather, I favored the Landlord's submissions which were supported by the documentary evidence. Accordingly, I found that a person permitted on the property by the Tenant, the Tenant's boyfriend, has seriously jeopardized the health and safety and a lawful right of the landlord by hitting the Landlord several times with a baseball bat on October 14, 2015.

Next, I considered whether it would be unreasonable or unfair to the Landlord to wait for another one month Notice to End Tenancy to take effect. After consideration of the serious nature of this incident, the bodily harm caused to the Landlord, the current no contact order placed against the Tenant's boyfriend, and the length of time that has transpired since the event, I find it would be unreasonable to wait for another 1 month

Notice to End Tenancy to take effect as this tenancy relationship has already escalated to the point of the Landlord suffering bodily harm.

Section 88 of the *Act* provides that all documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

I did not accept the Tenant's submission that she was allegedly out of town until the end of January 2016 and therefore, she could not be served documents and could not move out before the end of the month. Rather, I found the Tenant's submission to be nothing more than another attempt by the Tenant to delay the eviction.

The Tenant confirmed that her boyfriend was still occupying the rental unit; therefore, I determined that the Tenant's boyfriend could be served the Order of Possession and could vacate the property with or without the Tenant being present. The Landlord can serve the Tenant the Order of Possession by having someone personally serving it to the Tenant's boyfriend or by any other means provided for by section 88 of the *Act*, as

listed above. As such, I informed the Landlord and Tenant of my decision to grant the Landlord's application during the hearing.

Next I considered that the Tenant has paid rent for the full month of January 2016. Given the seriousness of the attack upon the Landlord, I have considered that the Landlord will not regain possession until after he receives and serves the Order of Possession. Furthermore, the Landlord will have to ready the unit and work to find a replacement tenant. Therefore, I granted an Order of Possession effective 2 days upon service and the monies received by the Landlord for January 2016 can be considered for use and occupancy prior to the effective date of the Notice and for loss of rent for remaining days in January once the Tenants have vacated.

In addition to the above, the Landlords may want to ask their municipal police department to assist in keeping the peace when the Order of Possession is to be served upon the Tenant or her boyfriend.

Conclusion

The Landlord was successful with his application and has been granted an Order of Possession.

The Landlord has been issued the Order of Possession effective **2 Days upon service**. In the event that the Tenant does not comply with this Order it may be filed with Supreme Court and enforced as an Order of that Court.

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: January 19, 2016

Residential Tenancy Branch

