



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

ET

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order to end tenancy early and obtain an Order of Possession.

Although personally served with the Application for Dispute Resolution and Notice of Hearing on December 30, 2015, the Tenant did not appear. Service of the Tenant was witnessed by U.P., who provided a signed letter in evidence; as well, the police report submitted by the Landlord confirmed that the police also witnessed service on the Tenant of the Notice of Hearing and Application for Dispute Resolution. Accordingly, I find that the Tenant was duly served with notice of the hearing in accordance with the *Residential Tenancy Act* and I proceeded in his absence.

The Landlord, appeared at the hearing via telephone conference, gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

Issue to be Decided

Is the Landlord entitled to end tenancy early and obtain an Order of Possession?

Background and Evidence

The Landlord testified that the tenancy began on July 1, 2014, initially as a three month fixed term tenancy after which it became a month to month. She provided a copy of the Residential Tenancy Agreement in evidence.

The Landlord advised that a previous hearing occurred on December 2, 2014 wherein the Tenant sought to cancel a notice for cause and at which time the parties reached a settlement agreement. The Landlord provided a copy of that Decision in which the parties' agreement is noted as follows:

1. the Tenant shall not disturb the Landlord or her family;

2. the Tenant will be of good behaviour and keep the peace; and,
3. the Tenant will continue with his prescribed medical treatment.

The Landlord testified that she is now seeking to end the tenancy early and obtain an Order of Possession as the Tenant has continued to unreasonably disturb her and her family. She stated that the rental unit is in the basement of her family home where she lives with her two children and her husband (although her husband has been away for work for some time).

The Landlord testified on December 27, 2015, she sent her two young children to live with family members as she is so frightened of the Tenant. She confirmed that on December 28, 2015 she also left the family home and has not been living there.

Introduced in evidence was a statement from S.R. who identified himself as the Landlord's brother. He writes that on December 27, 2015 he retrieved the Landlord's children and moved them to their grandparents. He also writes that R.B., the Landlord's cousin attended the Landlord's home at that time to stay with her for safety and comfort.

Also introduced in evidence by the Landlord were six audio recordings of the Tenant taken on December 26, 2015 beginning at approximately 6:00 a.m. I listened to all of these recordings and confirmed what I heard with the Landlord. Specifically, the Tenant can be heard playing loud music, yelling and swearing, laughing, and singing what sounds to be children's nursery rhymes and banging on the ceiling or walls. The Tenant also sounds like he is at times changing his voice and speaking to, or arguing with, himself in an agitated manner, and or mumbling incoherently. The Tenant is also heard saying the, "the children" repeatedly.

The Landlord testified that the next day, December 27, 2015, the Tenant left his rental unit yelling and screaming with his keys and a rope, only to return shortly thereafter and send a message to the Landlord asking her to come downstairs to his rental unit and retrieve his rent money (which he wrote was in cash) at 4:44 a.m. This text message was introduced in evidence and in this text he asks her to "Rsvp ASAP". The Landlord testified that she found this message to be unsettling as it was very inconsistent with his previous behaviour.

Also introduced in evidence was an affidavit from R.B., who is the Landlord's family cousin. She writes that she was at the Landlord's home on December 28, 2015 and heard the following between 4 am and 7 am:

...

- a. Yelling intermittently in an unintelligible voice, deep garbled and high pitched.
- b. Yelling Gringo and Hombre followed by F You on a number of occasions.
- c. Yelled at one point- "I told you not to get up. I told you...."
- d. On two occasions, he spoke a word and then spelled it out.
- e. Knocked repeatedly on the wall 3 different times, followed by yelling.
- f. Whistled loudly a child's nursery rhyme.

- g. Lots of loud door and shelf banging followed by yelling.
- h. Gate banging and going to the car at 5 am, screeching off and returning 30 minutes later. Followed by loud noises and music coming from his suite this time.

[Reproduced as Written]

Also introduced in evidence were copies of police reports which confirm the police have attended the Tenant's rental unit on numerous occasions. The Landlord testified that on one occasion the police attended and the Tenant informed them that his 17 month old son, "accidentally called 911".

The Landlord further testified that the police attended the rental unit on December 27, 2015 at approximately 4:00 a.m. She stated that they left 45 minutes later after which she could hear the Tenant yelling, "police came to my house and broke down my door. It's just me and my son. I'm going to slit their throats." She confirmed that the police did not break down his door.

The Landlord testified that she issued a 1 Month Notice for Cause on December 30, 2015 with an effective date of January 31, 2015. The Landlord testified that she will not return to her home until the Tenant had vacated the rental unit as she is concerned for her safety and that of her children's. She also stated that on December 26, 2015 the police told her to lock her windows and doors and to call 911 if she needed to.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 56 of the *Act* allows a tenancy to be ended early without waiting for the effective date of a one month notice to end tenancy if there is evidence that the tenant has breached their obligations under the tenancy agreement or *Act* and it would be unreasonable or unfair to wait for the effective date of a one month notice to end tenancy.

In this case, I am satisfied that the Tenant has unreasonably disturbed the Landlord and her children. I accept her evidence that she is frightened of him and unwilling to return to the family home until he vacates the rental unit. The Landlord cried during her submissions and was clearly very frightened of the Tenant. I have also listened to the recordings of the Tenant, read the statements from the Landlord's family members as to their observations, and on this basis, and her compelling testimony, find his behaviour to be very disturbing. I am particularly concerned about the statement the Tenant made about "slitting their throats".

In all the circumstances and on a balance of probabilities, I find the Tenant has significantly breached the tenancy agreement and the *Act* by unreasonably disturbing the Landlord and her

family. **Based on this conclusion, I find that the Landlord has established sufficient cause to end this tenancy.**

I have also considered whether it would be unreasonable or unfair to the Landlord to wait for a one month notice to end tenancy to take effect. I find it would be unreasonable to wait for a one month notice to end tenancy to take effect. Therefore, I grant the Landlord's application to end this tenancy early.

I grant the Landlord an Order of Possession effective **immediately**. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that court.

Conclusion

The Landlord's application to end this tenancy early pursuant to section 56 of the *Act* is granted.

The Landlord is granted an Order of Possession effective immediately.

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 25, 2016

Residential Tenancy Branch

