



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Crofton Quay Developments Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

ET, FF

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 and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

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

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 March 1, 2011. The tenant pays rent on the first day of the month. The landlord is holding a security deposit in the sum of \$225.00. A copy of the tenancy agreement was supplied as evidence.

The landlord has requested the tenancy end based on an incident that occurred on January 18, 2016. The landlord said that on this date the police were called to the rental unit to deal with a hostile male; the tenants' son. The landlord submitted that the son was waving an axe and took another guest hostage in the tenants' unit. More than

five police vehicles, an emergency response team (SWAT) and a dog team arrived at the rental unit.

During the events that occurred with the hostage-taking a tenant in another unit had to be taken to hospital by ambulance. The landlord believes this was caused by the stress of the incident that was taking place.

The landlord attempted to obtain a copy of the police report but privacy legislation prevents the police from releasing details to the landlord. The landlord provided a telephone number for a RCMP constable; the officer did not attend the hearing.

The landlord provided a copy of a January 19, 2016 letter to the police, requesting information on the incident.

The landlord provided a witness statement signed by four occupants of two different units in the building. These individuals signed a prepared statement that the tenant and his son were causing a disturbance on January 18, 2016 by wielding a hatchet in a dangerous and threatening manner. Concerned tenants called the police and the RCMP arrived. When the police arrived the guest in the tenants unit took a female hostage; she was also a guest in the tenants' unit. The tenants have signed stating the presence of the tenant and his guests create a sense of fear and uneasiness and that he is a threat to their health, safety, security and enjoyment.

The landlord said that the copies of the witness statements given to the tenant were redacted; removing the names and unit numbers of the complainants, as they are afraid the tenant will retaliate. Other than S.W., tenants did not wish to attend the hearing to testify. I explained that my reference to those individuals and unit numbers was made on the understanding that the landlord had provided the tenant with an identical copy of the evidence, as required by the Residential Tenancy Branch Rules of Procedure.

The landlord's witness provided affirmed testimony in relation to an alleged event that occurred on February 2 or 3, 2016. The witness provides some employment services for the landlord at the rental unit building. The witness said that the tenant inappropriately touched her several times when she was in another room. Later the witness was awakened by pounding on her female neighbours' door. She could hear the neighbour telling the person to go away. She got out of bed and opened her door and saw the tenant. The witness told him to cease. He then approached her door; she closed the door and he broke the window to her room.

The tenant had no questions for the witness.

The tenant replied that as far as he knew there was no hostage-taking incident. A week prior to the incident the tenants' son arrived at the rental unit. The son had been placed on a court order that included conditions requiring the son to reside with his father. The tenant was not pleased about the court order but did not take any steps to have the conditions changed. The tenant said his son has had some mental health challenges.

On January 17, 2016 the tenant spent the night in a friends' unit in the building. The tenant received information that his son had his ex-partner in the rental unit; contrary to court ordered conditions. Early in the morning of January 18, 2016 the tenant went to his rental unit and when he saw the female ex-partner in the unit with his son he told them both to leave; but they refused to do so. The tenant said he asked a neighbour to call the police. The tenant said he then left the property. As he was walking away he saw the SWAT team "suiting up."

The tenant wanted to get further away as he thought the police might shoot his son. The tenant said it took approximately 2.5 hours to end the incident. An occupant of a different unit called the tenant to let him know when he could return. The tenant does not know why the police were at the rental unit property for 2.5 hours; but he thinks they decided it was a hostage-taking incident. The tenant believes his son decided to peacefully surrender to the police. The tenant said his son is currently in custody.

The tenant said that no one in the building fears his son and that he was aware of the names of those who had signed the witness statements. The tenant said the witnesses all came to see the tenant to tell him they were coerced into signing the statements. They said if they did not sign the statements they would be evicted.

The tenant said that no one was removed by ambulance; that no one had a heart attack.

The tenant referenced a note he had recently received from a past manager at the building. This person ceased working in the building in July 2012; she reported the tenant to be a good tenant who was neat, clean and considerate.

The tenant did not wish to discuss the incident that is alleged to have occurred after January 18, 2016. He had no recollection of such an incident.

Analysis

In order to establish grounds to end the tenancy early, the landlord must not only establish that he has 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.

The reasons for eviction without a Notice ending tenancy are set out in section 56(2) of the Act:

(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

(Emphasis added)

I have considered whether the landlord has cause to end the tenancy for the reasons set out in the application and contained in section 56 of the Act.

As the tenant allowed his son to remain in his rental unit as a guest I find that the sons' actions can have an impact on the tenancy. The tenant did not take any steps to remove his son from the rental unit; such as approaching the court to ask that the condition to reside with the father be removed from the court order. It is perhaps understandable that the tenant did not take those steps; however, the result was that his son remained in the rental unit as a guest.

In relation to sufficient cause, I find that the disturbance caused on January 18, 2016 was significant and could reasonably be expected to have adversely affected the security, safety or physical well-being of another occupant. There is no dispute that multiple police attended at the rental unit. Even the tenant was afraid there was the possibility the police would use firearms. If the tenant was fearful that firearms might be used against his son it is also reasonable to accept that others who live in the building could have been placed at potential risk.

Initially the tenant said there was not a hostage taking; then he acknowledged that the police had said it was a hostage-taking.

The landlord has supplied signed witness statements from four individuals who did not attend the hearing to provide testimony. The tenant has said those individuals signed the statements under duress. The tenant did not bring forward any evidence to support that submission. I have placed little weight on those signed statements, as they were redacted when given to the tenant and those individuals did not attend the hearing where they could have been questioned.

However; I find that the tenant understood his son could pose some risk and that his behaviour might be unpredictable. Even when the tenant knew his son was in breach of a court order he did not contact the police but left that to another occupant of the building.

I find, on the balance of probabilities that the landlord has proven that the action of the tenants' guest resulted in a situation where the security, safety or physical well-being of another occupant of the residential property was likely affected. The presence of the police, with the risk of firearm use, as acknowledged by the tenant as a concern, cannot be found to be anything other than a potential risk to others.

I did not place any weight on the testimony given by witness S.W. as the tenant had not been served with notice of the landlord's intent to rely on that alleged incident.

Therefore, I find that the landlord has established cause to end the tenancy pursuant to section 56 of the Act.

Secondly, I find in the circumstances it would be unreasonable and unfair to require the landlord to wait for a notice to end the tenancy under s. 47. The incident that occurred on January 18, 2016 was serious. I find it is reasonable that the landlord take this action to ensure that the safety of all occupants is considered as quickly as possible.

Therefore I find that the landlord is entitled to an Order for 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.

As the application has merit I find, pursuant to section 72 of the Act, that the landlord may retain the \$50.00 filing fee from the value of the security deposit held in trust. The value of the deposit is now \$175.00 plus any interest that may have accrued.

Conclusion

The landlord is entitled to an Order of possession.

The landlord is entitled to filing fee costs.

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: February 19, 2016

Residential Tenancy Branch