



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC O ET FF

Introduction

This hearing dealt with two Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Tenant submitted her Application for Dispute Resolution to the Residential Tenancy Branch on May 6, 2016. She seeks an order cancelling a 1 Month Notice to End Tenancy for Cause, dated May 4, 2016 (the “1 Month Notice”), and other unspecified relief.

The Landlord submitted her Application for Dispute Resolution to the Residential Tenancy Branch on May 26, 2016. The Landlord seeks an order ending the tenancy earlier than the tenancy would end if notice were given under section 47 of the *Act*; an order of possession; and an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf, and was capably assisted by K.W., an advocate. The Landlord attended the hearing on her own behalf.

The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the 1 Month Notice?
2. Is the Landlord entitled to an order ending the tenancy earlier than the tenancy would end if notice were given under section 47 of the *Act*?
3. Is the Landlord entitled to an order of possession?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

This fixed-term tenancy began on January 1, 2016, and was to end on January 1, 2018. The written tenancy agreement required rent payments of \$700.00 per month, payable on the first day of each month. R.D.H. resides with the Tenant in the rental unit.

The Landlord's Claims

The Landlord has applied for an order ending the tenancy earlier than the tenancy would end if notice were given under section 47 of the *Act*, and an order of possession. The Landlord's Application is based on an assault she says took place on May 23, 2016, and other threatening behaviour.

The circumstances surrounding the assault were described in a written summary submitted by the Landlord, and were further detailed during her oral testimony. She says that on May 23, 2016, she observed R.D.H. walking the Tenant's dog in a part of the yard near the Landlord's chickens. She says she approached R.D.H. to remind him not to use the area. The Landlord says he then moved towards her and struck her neck and shoulder area, causing her to fall to the ground.

As a result of the incident, the R.C.M.P. attended the property and R.D.H. was arrested. He is not currently permitted to return to the property due to a "no go" order.

The Landlord says she has been to the doctor twice as a result of the assault, and continues to be fearful. The Landlord provided a copy of her doctor's clinical records, dated May 26, 2016. The records state:

"seen today for follow-up, she was recently assaulted and pain over her shoulder, tender over tip of acromion, the xrays were benign, did not show fracture but has muscular injury to shoulder from the assault. This is

causing pain and tenderness up in the trapezius, suggested comfort measures today and follow up as needed.” (reproduced as written)

The Landlord added she has also seen and heard examples of aggressive behaviour directed towards the Tenant, including threats to punch her in the face. The Tenant denied R.D.H. has threatened her.

The Landlord also advised R.D.H. has displayed an “elder abuse” brochure on the rental property and at her business, which she found to be threatening.

The Landlord described her feelings in a hand-written statement, submitted with her documentary evidence: “Now all I can say is I live in fear, have pain physically and trouble sleeping from the assault. I am also afraid for my 90 year old mother who also lives on our farm.”

The Tenant provided oral evidence in response. She flatly denied the assault occurred. Although not present during the incident, the Tenant advised R.D.H. was 10 feet away from the Landlord when she fell over. The Tenant suggested R.D.H. is being framed.

The Tenant advised that R.D.H. is 77 years old, frail, and is suffering from dementia. She said he would not be physically able to knock someone to the ground. The Landlord disagreed and repeated that the assault did occur, adding that she has seen R.D.H. digging and being active in the yard on a number of occasions.

The Tenant also gave evidence with respect to the Landlord’s allegation of threatening behaviour by R.D.H. According to the Tenant, the Landlord constantly changed her mind with respect to parking the Tenant’s motorhome on the property, the use of raised bed gardens, and the location of the Landlord’s belongings on the property. She says this was hard on R.D.H. and the Tenant, and that R.D.H. in particular considered the Landlord’s behaviour to be elder abuse.

The Tenants’ Claims

The Tenant has applied for an order cancelling the 1 Month Notice, which was issued based on repeated late payments of rent by the Tenant.

Although the Tenant acknowledged rent was paid late as claimed by the Landlord, she advised there were always good reasons why rent was paid late. First, she suggested the sleep and work schedules of the parties impacted her ability to pay rent on time. Second, the Tenant says she was reluctant to pay rent in cash without giving it directly

to the Landlord. Third, the Tenant advised that on one occasion she tried to pay rent directly. She says she knocked on the Landlord's door, but that the Landlord did not answer.

The Landlord's evidence was that the Tenant has paid rent late every month since the beginning of the tenancy. She also provided copies or notes to her bookkeeper showing rent was received on January 6, February 4, March 2, April 4, and May 4, 2016.

Analysis

The Landlord has applied for an order to end the tenancy earlier than the tenancy would end if notice were given under section 47 of the *Act*, and an order of possession.

Section 56 of the *Act* permits a landlord to make an application to obtain the relief being sought by the Landlord, and sets out the circumstances in which an arbitrator can make these orders. The circumstances are enumerated in section 56(2), which states:

“[An arbitrator] 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...

- (a) The tenant or a person permitted on the residential property by the tenant had 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 landlords 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.

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

The Landlord's Claim

I find the Landlord has demonstrated, on a balance of probabilities, that the assault took place as alleged. Further, I find that the assault, committed by an occupant of the rental unit, significantly interfered with or unreasonably disturbed the landlord, and seriously jeopardized the health or safety or a lawful right or interest of the landlord.

Further, I find it would be unreasonable or unfair to the Landlord, in the circumstances of an assault, to wait for the tenancy to end pursuant to section 47 of the *Act*.

Accordingly, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

In addition, having been successful, the Landlord is granted a monetary order in the amount of \$100.00 in recovery of the filing fee. The monetary order may be filed in and enforced as an order of the Provincial Court (Small Claims).

Tenant's Claim

The Landlord has been granted an order ending the tenancy early and an order of possession. Accordingly, the Tenant's Application to cancel the 1 Month Notice is moot and her Application is dismissed.

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant.

The Landlord is granted a monetary order in the amount of \$100.00.

The Tenant's Application is dismissed.

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: June 09, 2016

Residential Tenancy Branch