



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes ET FF

Introduction

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

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

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence.

Issues

Is the landlord entitled to an order of possession for an early end to the tenancy?

Is the landlord entitled to recover its filing fee?

Background & Evidence

The rental unit is on half of a duplex cottage house. The tenant resides on one half and there is another female tenant "Joe" in the other half. The landlord resides in a separate house on the same property. The tenancy began on August 29, 2016.

The landlord has applied for an order of possession based on an early end to the tenancy on the grounds that the tenant seriously jeopardized the health and safety or a lawful right or interest of the landlord or another occupant and put the landlord's property in significant risk.

The landlord submits that on December 23, 2016 there was an incident involving the tenant and the neighboring tenant Joe during which the tenant verbally threatened to kill Joe. The landlord did not call Joe as a witness but submitted a written statement from her. In the statement, Joe writes that following an argument over noise complaints, the tenant threatened to kill her and her kids.

Further, on January 1, 2017 the landlord's agent H.Y. was at the rental property as the landlord intended to serve the tenant with a 1 Month Notice to End Tenancy. The landlord left a note on the tenant's door asking for the tenant's phone number. Later this evening, the tenant called the landlord and provided her phone number. During this call, after the landlord advised the tenant about complaints regarding the noise level of her pets, the tenant proceeded to swear at the landlord and calling her names. This continued for at least 45 minutes and the tenant even called back after the landlord hung up on her once.

Then on January 2, 2017 there was another incident involving the tenant and Joe. In a written statement provided by Joe, she alleges the tenant threatened to "kick the shit out of her" after she confronted the tenant about dog urine on her steps. Joe called the police following this incident and the police responded to the property.

Then on January 15, 2017 the landlord received a letter from the tenant requesting a mutual end to the tenancy. In this letter, the tenant wanted the landlord to agree to return the security deposit. On January 17, 2017 the landlord, landlord's agent and "Dwayne" (a handyman employed by the landlord) went to the tenant's unit to deliver a response letter. The landlord was in agreement with the mutual end to tenancy but did not sign the letter as she did not want to commit to returning the security deposit before the end of the tenancy. The tenant was not happy with the landlord's response and threatened to "cause big trouble around the farm" and stated the landlord will regret not signing the agreement. The police were again called following this incident by the landlord's agent as she did not feel comfortable leaving the landlord home alone.

The landlord's agent submits that the landlord is elderly, 85 years old, and feels very threatened and unsafe in her home and that it would be unreasonable for the landlord to wait for a 1 Month Notice to take effect.

The tenant submits that she does not know why the police were called by Joe on the first occasion. She denies making any threats to Joe and states the police just advised her to ignore Joe.

The tenant also denies making any threats on the second occasion on which the police were called and submits she only just shut the door on the landlord.

The tenant submits the landlord is just complaining over nothing. The tenant further submits that she would like a copy of the police reports.

The landlord replied that she attempted to obtain police reports but was advised that they would not be available in time for the hearing.

Analysis

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 or a person permitted on the property by 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 for cause to take effect.

I find the evidence supports a finding that the tenant has seriously jeopardized the health and safety of the landlord or another occupant and put the landlord's property in significant risk. I accept the testimony of the landlord, the landlord's agent and the written statements provided by Joe over the testimony of the tenant and find the tenant did make each of the alleged threats. Although the landlord did not present Joe as a witness, I find the totality of the evidence presented corroborates the written statements provided by Joe. Further, the fact that police were called on two separate occasions also corroborates the landlord's evidence that threats were made by the tenant. I accept the landlord's testimony that she attempted to obtain the police reports but they were not available in time for the hearing.

In the circumstances I find it would be unreasonable, or unfair to the landlord to wait for a 1 Month Notice for cause to take effect. The threats made by the tenant are very serious and put the safety of the landlord and another occupant in jeopardy and pose a

significant risk to the landlord's property. Accordingly, I find that the landlord is entitled to an order for possession effective immediately after service on the tenant. This order may be filed in the Supreme Court and enforced as an Order of that Court.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application. This amount can be retained from the tenant's security deposit.

Conclusion

I grant an Order of Possession to the landlord effective **immediately after service of this Order** on the tenant. Should the tenant 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 26, 2017

Residential Tenancy Branch