



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FF

Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested an early end to tenancy and to recover the filing fee.

The hearing was conducted by teleconference on April 20, 2017 at 10:30 a.m. Only the Landlord's building manager, S.M. called into the hearing. She gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

S.M. testified that she was not able to personally serve the Tenant as he was in custody as a result of the criminal charges arising from the incident giving rise to the Landlord's request for an early end to tenancy. S.M. Tenant testified that she served the Tenant's lawyer with the Notice of Hearing and the Landlord's Application on March 28, 2017 at the Tenant's first appearance in court, where the Tenant appeared by video conferencing.

Sections 71(1) and 71(2)(b) of the *Residential Tenancy Act* provide as follows

Director's orders: delivery and service of documents

71 (1) The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

...

(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;

Additionally, a lawyer may accept service of documents on behalf of their client and in this case I accept the Landlord's evidence that the Tenant's lawyer was served with notice of this hearing and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Landlord be granted an early end to tenancy?
2. Should the Landlord be entitled to recover the filing fee?

Background and Evidence

S.M. stated that the tenancy began approximately two years ago. The rental unit is located in a supported housing complex.

S.M. testified that the incident giving rise to the request for an early end to tenancy occurred on March 20, 2017 at approximately 1:45 p.m. and stated that the Tenant is alleged to have assaulted and sexually assaulted another resident of the rental building by the name of K.E.

S.M. stated that she is informed that the Tenant initially assaulted K.E. in her rental unit. According to the information provided by the victim, the Tenant is alleged to have punched K.E. in her room as well as pinning her to the ground in an attempt to remove her clothing.

S.M. stated that to her knowledge K.E. told the Tenant she wanted to go elsewhere in an attempt to get away from him and to get help. Video surveillance provided in evidence shows the Tenant (who is shirtless) and K.E. in a hallway and then in an elevator. In this video, the Tenant is seen pinning K.E. against the elevator wall, kissing and fondling her breast and groin area. A Critical Accident/Incident Report provided in evidence further confirms the contents of the video.

S.M. stated when K.E. came downstairs she, and a support worker K.W., observed the victim bleeding from her nose, and that she was extremely upset and almost hysterical. Video surveillance of the reception area shows K.E. as visibly upset.

S.M. stated that she called the R.C.M.P. who arrived and arrested the Tenant and that to her knowledge the Tenant has been charged with assault and sexual assault.

S.M. further stated that the Tenant is currently incarcerated and she is not aware of the date of his next court appearance.

S.M. testified that the victim K.E., as well as other women in the building, are extremely frightened and have asked for reassurance that the Tenant will not be permitted back in the rental building.

She further stated that she has had support workers in the rental building for the tenants as well as staff who were affected, and that three staff have taken stress leave as a result of this incident.

Analysis

Section 56 of the *Residential Tenancy 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 a 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.

After careful consideration of the foregoing, documentary and digital evidence, and on a balance of probabilities I find that the Tenant has significantly breached section 28 of the *Act* by negatively affecting the quiet enjoyment and safety of other tenants of the rental building.

I accept the Landlord's submissions that the Tenant's behaviour has seriously affected K.E., as well as other residents and staff. I also accept that the Tenant's behaviour is so concerning that if he were to continue to reside in the unit others would be at risk of suffering significant harm.

Based on the forgoing conclusions, I find it would be unreasonable to wait to wait until the effective date of a 1 Month Notice to End Tenancy. Therefore, I grant the Landlords' application to end this tenancy early.

Conclusion

The Landlord is granted an Order of Possession effective **immediately after service upon the Tenant**. Pursuant to section 71 of the *Act*, I grant the Landlord authority to serve the Tenant by sending the Order of Possession to the Tenant's lawyer by fax.

In the event that the Tenant does not comply with this Order of Possession it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

As the Landlord has been successful in this Application, I also award them recovery of the \$100.00 filing fee and authorize the Landlord, pursuant to sections 38 and 72 of the *Act* to retain \$100.00 of the Tenant's security deposit as payment of this amount.

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: April 20, 2017

Residential Tenancy Branch