



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding S & D PROPERTIES HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for an order or possession to end the tenancy early.

The landlord's agent and the property owner (collectively the "Landlord") appeared at the teleconference hearing and gave affirmed testimony. The tenants also appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord and tenants were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

Tenant N.P.'s last name was misspelled on the landlord's application. Tenant N.P. corrected the spelling of her last name. The correct spelling is shown in the style of cause.

At the start of the hearing, Tenant D.B. requested an adjournment to give the tenants a further opportunity to serve and submit evidence. Tenant D.B. testified that he received a letter on May 5, 2017 from an advocacy group informing him that they have refused to assist him. Tenant D.B. testified that he had provided his documents to an advocate and that he expected the documents to be submitted as evidence. No evidence has been submitted for the tenants. When asked about what evidence Tenant D.B. wished to submit, the tenant indicated that it was evidence that would prove that the landlord is spraying poison in the tenants' unit.

The landlord opposed the adjournment. The landlord testified that Tenant D.B. has been caught on security camera footage committing acts of vandalism to the property. The landlord indicated that the situation is a serious one such that the landlord is seeking to

end the tenancy immediately. The landlord indicated that there is another Residential Tenancy dispute between the parties for which a hearing has been scheduled for later this month. The landlord indicated that they believed that the tenants' proposed evidence is relevant to the other dispute and not this one.

Given the urgent nature of the landlord's application for an order of possession, I determined that I would hear testimony from the parties to better understand the facts and issues in dispute so as to be able to evaluate the relevance of the tenants' proposed evidence in considering whether an adjournment was appropriate. Tenant D.B. was instructed to alert me about any particular evidence that the tenant wished to submit in response to the issues and facts that arose during the hearing. I explained to the parties that if the tenants alerted me that they had evidence relating to a particular issue or fact in dispute, I would assess the relevance of the tenants' proposed evidence and consider whether an adjournment is appropriate.

During the hearing, Tenant D.B. only indicated that he wished to submit evidence that would establish that the landlord is spraying poison in his unit. It was evident from the testimony of Tenant D.B. that his purpose for wanting to submit this evidence was to establish why he was justified in committing the vandalism.

In considering the tenants' request for an adjournment, I have taken into consideration the criteria for granting an adjournment set out in Rule 7.9 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"). I have also taken into consideration Rule 7.17 of the Rules of Procedure which allows an arbitrator to determine the relevance, necessity and appropriateness of evidence.

After hearing testimony from the parties, I find that the evidence that Tenant D.B. wants to submit is not relevant to the issues before me arising from the landlord's application. The tenants' stated reason for the vandalism is of no relevance under section 56 of the *Act* in determining whether or not the tenancy should end. Therefore, I find that Tenant D.B.'s proposed evidence would not be considered in any event. As such, I find that there is no prejudice to the tenants in not granting the adjournment request. On the other hand, I find that there would be prejudice to the landlord if the hearing was delayed as the landlord is seeking to end the tenancy early on the basis of allegations that raise significant concerns about the safety of other occupants in the building.

Issue to be Decided

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

Background and Evidence

The undisputed evidence established that a month to month tenancy started on November 9, 2014, by way of an oral tenancy agreement. Rent in the amount of \$750.00 is due on the first day of each month.

The landlord testified that Tenant D.B. has been committing acts of vandalism damaging the landlord's property since the summer of 2016. The landlord's complaints included, but were not limited to, the following:

- Tenant D.B. cut the electrical cords for the washer and dryer used by tenants in the building;
- Tenant D.B. spray painted all the security camera's in the building disabling them by obscuring the view; and
- Tenant D.B. put crazy glue in the locks of the exterior doors to the building and the padlocks on the mechanical room. As a result of the glue, the locks were inoperable and the doors could not be opened.

The landlord submitted security camera footage in support of their testimony.

The landlord testified that as a result of spray painting all the security cameras, there is no video footage after January 2017 due to the damage. The landlord testified that they have incurred costs of \$1,000.00 to replace the locks that had been damaged by the tenant. The landlord submitted receipts for the cost of the repairs.

The landlord testified that they brought their application to end the tenancy early after first attempting, without success, to have the R.C.M.P. handle the situation.

Tenant D.B. admitted to cutting the electrical cords for the washer and dryer as alleged which can be clearly seen in the security camera footage. Tenant D.B. testified that he was justified in doing so given that the landlord is spraying poison in his unit.

Tenant D.B. denied the other acts of vandalism claiming the security footage doesn't prove any other act except the vandalism to the laundry facilities.

The landlord is seeking an order of possession to end the tenancy early due to the longstanding pattern of intentional acts of vandalism by Tenant D.B.

Analysis

Based upon the evidence and testimony of the parties, and on the balance of probabilities, I find the following.

Section 56(1) of the *Act* permits a landlord to make an application for dispute resolution to request an order for possession to end a tenancy on a date that is earlier than the tenancy would end if a notice to end the tenancy were given for cause under section 47 of the *Act*.

Section (2) of the *Act* grants the arbitrator the authority to make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied that:

- (a) The tenant or 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 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

Pursuant to section 56(1) (iv) of the *Act*, I find that there is sufficient evidence to satisfy me that Tenant D.B. has engaged in illegal activity that caused damage to the landlord's property by committing acts of vandalism with the deliberate intention to cause damage.

In making this finding, I have taken into consideration the fact that Tenant D.B. admitted to cutting the cords for the washer and dryer which he is seen doing on the security camera footage. Although Tenant D.B. denies the other acts of vandalism attributed to him, I do not find the tenant's testimony believable. In making this finding, I have taken

into consideration what is shown on the security camera footage coupled with the tenant's admission to having committed one act of vandalism and his motivation for doing so. Tenant D.B. argued that he had been mistreated by this landlord for years which is why he was justified in doing what he did. I find that the tenant's explanation and the extent of the vandalism to date supports a likelihood that the tenant will continue to cause damage to the landlord's property.

Based upon the foregoing, I find that 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. In making this finding, I have taken into consideration the significant risk to the occupants' safety in waiting for a notice to end the tenancy. In particular, the risk of significant harm to the other occupants in the event that there is a fire and access to and from the building is blocked by doors that are inoperable. Therefore, I find that the landlord is entitled to end the tenancy early and I grant the landlord an order of possession.

Given that the tenant has displayed a complete disregard for the safety of the other occupants in the building and the evidence suggests that there is a likelihood that the vandalism may continue, I find that the order of possession should take effect immediately after the tenants are served with a copy of the Order.

Conclusion

The landlord's application is successful and the tenancy will end early.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective immediately after service of this Order on the tenants. Should the tenants 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: May 12, 2017

Residential Tenancy Branch