



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing convened as a result of a 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 May 11, 2017. Only the Landlords called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord, P.S., testified that she personally served the Tenant, D.R., with the Notice of Hearing and the Application on April 25, 2017; accordingly, I find the Tenants duly served and I proceeded with the hearing in the Tenants' 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/Tenant'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. Are the Landlords entitled to an early end to tenancy?
2. Should the Landlords recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which indicated this one year fixed term tenancy began August 1, 2016.

Also introduced in evidence was a copy of a 1 Month Notice to End Tenancy for Cause issued on January 15, 2017 (the "Notice") The effective date of the Notice was March 31, 2017. P.S. testified that K.W. personally served the Notice on the Tenant D.R. on January 15, 2017. The reasons indicated on the Notice are as follows:

- the Tenant is repeatedly late paying rent;
- the Tenant or a person permitted on the residential property by the Tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk;
- the Tenant has engaged in illegal activity that has caused or is likely to
 - 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
 - jeopardize or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- Tenant knowingly gave false information to a prospective Tenant or purchaser viewing the rental unit/site or property/park;
- Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

P.S. stated that the Tenant failed to make an application for dispute resolution within 10 days of receiving the Notice. When I asked P.S. why she did not apply for an Order of Possession in January based on the undisputed Notice, she stated that the Tenant agreed to move from the rental unit on the effective date of the Notice. She further stated that she was out of country until March 4, 2017.

P.S. stated that she wanted to do a "friendly moving" and the Tenant, D.R., promised that she would move out amicably by the effective date of the Notice, yet she did not.

P.S. stated that the interactions with the Tenant then deteriorated rapidly since she agreed to move out. P.S. stated that the Tenant, D.R., has bolted the door and refuses to allow any inspections and has threatened the Landlords.

P.S. stated that the rental unit has been listed for sale. She claimed that as soon as the rental unit was listed for sale, the Tenant "changed". She refused to answer the phone, refused entry to the rental unit despite receiving proper 24 hours' notice. The Landlord provided in evidence copies of the Notice to Enter.

An email from the realtor, April 27, 2017, indicates that the Tenant has installed a chain lock on the door, and during a showing on April 21 the Tenant opened the door just enough to "scream obscenities" towards the realtor, the Landlord, K.S., and the prospective buyers. The realtor further writes that the Tenant refused the next scheduled showing following which he cancelled showings as he did not wish to waste anyone's time further.

K.S. also testified. He stated that on April 21, 2017 he attended with the realtor and a prospective buyer. He stated that the Tenant opened the door slightly as it was chained and began yelling to "get the hell out" and that she had not been given notice of entry. He stated that this was false as she was provided 24 hours' written notice as required by the Act.

K.S. also testified that April 22, 2017 he went to the rental unit. He stated that he knocked on the door and the Tenant, D.R., answered. He stated that he needed to check the key to make sure it works for the realtor (he noted that he had several keys but they were not labelled). He stated that D.R. said "get the hell out of here dumb head, stupid immigrant or else I will punch you". K.S. stated that he then called the police. K.S. stated that he spoke to the police who told him they could not do anything because it was a "landlord-tenant dispute".

On April 24, 2017 the Landlord applied for Dispute Resolution. K.S. stated that when he served the hearing package on the Tenant he attended with P.S. and a friend G. as he was concerned about her possible violent reaction.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenants who did not appear despite being properly served with notice of this proceeding, I accept the

undisputed version of events as discussed by the Landlords and corroborated by their evidence.

I accept the Landlords' evidence that the Tenants were served with the Notice and agreed to move out amicably. I further accept the Landlords' evidence that the Tenants failed to apply to dispute the Notice.

The Notice was issued pursuant to section 47 of the *Residential Tenancy Act*. Section 47(5) reads as follows

47(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

As the Tenants failed to dispute the Notice, they are conclusively presumed to accept the end of the tenancy and must move out of the rental unit. The Landlords initially applied for an Order of Possession based on the Notice, which would likely have been successful as the Notice was unopposed. However, I am unable to consider the validity of the Notice without such an application being properly brought before me.

The Landlords claim that they were advised by staff at the Branch to cross off their request for an Order of Possession based on section 47 and to instead seek an early end to tenancy based on the escalating behaviour of the Tenants. Whether that is the advice they received or their understanding of what was told to them, they applied under section 56 and I must therefore consider whether they have grounds to end the tenancy early. I find that it is appropriate to consider this request as if the 1 Month Notice had not been issued.

I accept the Landlords' undisputed testimony that the Tenants agreed to move out by the effective date of the Notice and informed the Landlords they would not oppose the end of the tenancy. I further accept the Landlords' evidence that despite their agreement to move, the Tenants have remained in the rental unit and their relationship with the Landlords has significantly deteriorated to the extent that the Tenants are refusing the Landlords access to the rental unit and one of the Tenants has verbally assaulted and threatened to physically harm the Landlord.

Section 56 of the *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 the Tenants have 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 consideration of the foregoing, the Landlords' undisputed testimony and evidence, and on a balance of probabilities I find that the Tenants have significantly breached section 29 of the *Act* by refusing the Landlords' access to the rental unit and threatening the Landlord. I further find it would be unreasonable or unfair to the Landlord to wait for a one month Notice to End Tenancy to take effect.

Conclusion

I grant the Landlords' application to end this tenancy early. The Landlords are entitled to an Order of Possession effective **two (2) days after service upon the Tenants**. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

I also grant the Landlords' request for recovery of the filing fee and authorize them to retain \$100.00 of the Tenants' security deposit as compensation for 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: May 12, 2017

Residential Tenancy Branch