



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on July 19, 2017 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by L.S. and G.R. The Tenant attended the hearing on his own behalf and was assisted by H.P., who identified herself as a law intern. All parties giving testimony provided a solemn affirmation.

According to L.S., the Application package, which included a Notice of a Dispute Resolution Hearing and digital evidence on a USB drive, was served on the Tenant by registered mail on July 21, 2017. Tracking information confirmed the Application package was received by the Tenant on July 26, 2017. The Tenant acknowledged receipt on that date. I find the Application package was received by the Tenant on July 26, 2017. The Tenant did not submit any documentary evidence in response to the Landlord's Application.

No issues were raised with regard to service or receipt of the documents described above. The parties were given an opportunity to present 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.

Preliminary and Procedural Matters

The Landlord submitted and served digital evidence in the form of a USB stick with the Application package. Rule of Procedure 3.10 states:

The format of digital evidence must be accessible to all parties. Before the hearing, the party submitting the digital evidence must determine that the other party and the Residential Tenancy Branch have playback equipment or are otherwise able to gain access to the evidence.

If a party is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

[Reproduced as written.]

On behalf of the Landlord, L.S. confirmed the Landlord did not determine the Tenant and the Residential Tenancy Branch were able to access the evidence. During the hearing, the Tenant confirmed the evidence could not be accessed in the format provided. Accordingly, the digital evidence has not been considered in reaching a Decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The parties confirmed the tenancy began on April 1, 2016. However, since March 31, 2017, the tenancy has proceeded on a month-to-month basis. Of the monthly rent amount of \$613.00, the Tenant pays \$320.00, while the remainder is subsidized. The Tenant paid a security deposit of \$306.00, which the Landlord holds.

On behalf of the Landlord, L.S. confirmed the Landlord wishes to proceed with the Application to end the tenancy. She testified that on July 8, 2017, the Landlord received a telephone report from the on-site hair dresser, who reported that an elderly tenant in the building had been assaulted. According to L.S., the assault took place when the Tenant entered the other tenant's unit, pushed him to the floor, and stomped on him. Photographs of bruising to the other tenant's chest and back, taken several days after

the event, were submitted with the Landlord's documentary evidence. Also submitted with the Landlord's documentary evidence were screen prints from video surveillance showing the Tenant outside the other tenant's door.

L.S. testified that the injured tenant has experienced pain, shortness of breath and panic attacks, and is fearful of the Tenant. Other tenants in the building have also expressed concerns about their safety.

H.P. made submissions on the Tenant's behalf. Although she did not dispute the "very horrible" assault took place as alleged, she provided reasons the Tenant believes the tenancy should continue. First, H.P. advised the Tenant's medications to deal with his mental health issues had changed the day before the assault. As a result, the Tenant was disoriented and confused and did not know what was going on. H.P. provided a description of the assault from the Tenant's perspective. She advised the Tenant thought he was at his own rental unit but had been locked out. When he gained entry and saw someone inside, he reacted, albeit inappropriately.

Second, H.P. submitted that the Tenant is not generally aggressive and is very remorseful. She stated he understands why the injured tenant would be afraid. In addition, H.P. referred to a letter of apology, submitted with the Landlord's documentary evidence, which the Tenant placed under the other tenant's door a few days after the assault.

Finally, H.P. described the assault as "incredibly unfortunate", and expressed concern about the possibility of homelessness for the Tenant.

Analysis

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

Section 56 of the *Act* permits a landlord to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the *Act*.

The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2). This provision states:

The director 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.*

[Reproduced as written.]

In this case, the Landlord submitted evidence in support of ending the tenancy as a result of an assault on July 8, 2017. This evidence included an oral description of the assault, photographs of bruises to the other tenant's chest and back, and a letter of apology from the Tenant. In reply, H.P. did not dispute the assault occurred but suggested that the Tenant's mental health issues, his remorse, and the possibility of homelessness weigh in favour of continuing the tenancy.

I have no difficulty in finding that the Tenant has seriously jeopardized the health or safety or a lawful right or interest of another occupant of the rental property. Further, I find that it would be unreasonable or unfair to the Landlord to wait for a notice to end the tenancy under section 47. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective one (1) day after service on the Tenant.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from the security deposit held by the Landlord.

Conclusion

The Landlord is granted an order of possession, which will be effective one (1) day 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.

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: August 17, 2017

Residential Tenancy Branch