



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

ET

Introduction

This hearing dealt with an application submitted by the landlord on September 5, 2017 seeking to end this tenancy early pursuant to section 56 of the *Act*. The hearing was scheduled to be heard on October 19, 2017.

The landlord provided affirmed testimony that on September 5, 2017 at approximately 4:30 or 5 p.m. copies of the application for dispute resolution and notice of hearing were taped to the tenant's door. The landlord placed the documents in a clear plastic holder, to protect them from rain. The landlord's girlfriend, C.A. was present as a witness. The landlord took photos of the documents after they had been taped to the door.

I find that these documents are deemed to have been served on the third day after posting, in accordance with section 89 and 90 of the *Act*.

The tenant did not attend the hearing.

Issue to be Determined

Has the landlord established the grounds to end this tenancy early pursuant to section 56 of the *Act*?

Background and Evidence

The tenancy commenced in 2015. The tenant lives in one of two rental units in the landlord's home. The landlord resides in the upper portion of the home with his mother.

The landlord said that on August 12, 2017 he was in his garage with several friends, relaxing. The landlord's mother approached him to ask if knew where the yelling was coming from; the landlord assumed it was from a neighbouring residence. The tenant

then came to the side door of the garage, which has a window, and began to scream at the landlord. The landlord asked the tenant to keep it down and the tenant responded by swearing at the landlord. The tenant then ran toward the landlord, making motions as if he was going hit the landlord. The landlord's friend managed to intervene and push the tenant out of the way, toward a fence.

The landlord called the police, who attended at the rental unit. The police told the landlord that the tenant admitted to his actions; charges were not pursued.

Later that night, at approximately 2 a.m. on August 13, 2017, the tenant began to bang on the ceiling and causing a disturbance. The landlord called the police again; they attended at the rental unit. The tenant told the police they were picking on him.

The tenant sent the landlord text messages on August 12 and 13th. At least one message was vulgar and suggested the landlord was threatening the tenant.

On August 15, 2017 the landlord issued and served the tenant a one month Notice to end tenancy for cause.

On August 16, 2017 the landlord had people visiting; they were watching TV in the garage. The tenant began walking back and forth on the sidewalk in front of the house. The tenant suddenly began to scream and leaping on the neighbour's vehicle, driver side door. The tenant then went to the back of the vehicle and began jumping on the bumper. The landlord called the police. The tenant then came up the driveway and began to jump up and down on an evergreen tree the landlord had planted in a pot. The tenant said that when he had tried to hit the landlord he should have kept going. The tenant was also talking "nonsense." The tenant was arrested and, subsequently released.

On September 14, 2017 the tenant saw the landlord in the garage; he got in his vehicle and then "squealed" out of the driveway. The landlord said there are small children in the neighbourhood and this behavior was worrisome. The landlord did not see the tenant next until October 3, 2017.

On October 3, 2017 the tenant was reminded he had been issued a notice to end the tenancy; the tenant swore at the landlord.

On October 13, 2017 at 4:30 or 5 a.m. the occupant of the second rental unit, I., came to the landlord's door to report that the tenant was causing a disturbance. I. called the

police, who came to the unit. The tenant was yelling, pounding and screaming. The tenant could be heard throwing items and the sound of items breaking could be heard. The tenant then went outside and was yelling and screaming. The police removed the tenant. The police told the landlord he was taking the correct steps in his attempt to end the tenancy and that removing himself from situations was wise.

On October 13, 2017 in the early evening the landlord was cutting the lawn. The tenant arrived and asked to be let into his unit. The landlord asked the tenant what was going on and the tenant responded by swearing at the landlord. The landlord called the police and they attended at the rental unit.

The landlord entered the unit on October 13, 2017 and could see evidence of plates having been smashed on the laminate flooring, causing damage to the floors.

The landlord said his mother is upset and worried that the tenant may assault the landlord or bring others to the property who could be threatening. The landlord said he finds this behavior unusual as the tenant posed no serious problems up until recently. The landlord describes the situation as terrifying as the tenant is unpredictable. The landlord's mother is not feeling safe in the house and is afraid the tenant could use a weapon.

The landlord has police file numbers for each incident where the police attended.

Analysis

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. The landlord must prove that the tenant has breached his obligations under section 56 of the *Act* and that it would be unreasonable or unfair to wait for the effective date of a one month Notice to end tenancy for cause to take effect.

Section 56 of the *Act* provides:

56 (1) *A landlord may make an application for dispute resolution to request an order*

(a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [landlord's notice: cause], and

(b) granting the landlord an order of possession in respect of the rental unit.

(2) 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, in the case of a landlord's application,

(a) the tenant or a 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 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.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

I found the landlord's testimony, over a lengthy hearing, convincing and consistent. The landlord did not present animosity toward the tenant, but has expressed what I find are serious and valid concerns for his and his mother's safety and security. From the testimony provided I find that the landlord has met the burden of proving that the tenant has caused unreasonable disturbance to the landlord and the other occupants of the home. Repeated incidents that have, from my perspective, resulted in legitimate calls to the police, are not acceptable. The tenant has attempted to assault the landlord, used vulgar and threatening language toward the landlord, engaged in unpredictable behavior, such as jumping on the evergreen tree, caused late night disturbances and made the landlord and his mother fearful. The landlord and his mother have a right to live on the residential property without fear of threats, having to endure unpredictable behavior and feeling fearful.

Therefore, I find that the landlord has established sufficient cause to end this tenancy.

Next I have considered whether it would be unreasonable or unfair to the landlord to wait for a one month Notice to end tenancy to take effect. I find that to require the landlord to wait for a hearing and to establish the effectiveness of the one month Notice to end tenancy would be unfair and unreasonable. I am sufficiently convinced that the landlord and other occupants' right to feel safe in the home has been disrupted by the tenant and that to wait for enforcement of a Notice to end tenancy would subject the landlord and the other occupants to a prolonged period of potential disruption and loss of security. Therefore, I find, pursuant to section 56 of the Act, that the tenancy must end.

I grant the landlord an order of possession effective **two (2) days** after it is served upon the tenant. This order may be filed with the Supreme Court of British Columbia and enforced as an order of that Court.

The tenant was served with notice of this hearing but has failed to attend the hearing to dispute the landlord's submissions.

Conclusion

The landlord is entitled to an order of possession.

This decision is final and binding and 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: October 19, 2017

Residential Tenancy Branch