



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, MNDC, RP

Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. To end the tenancy earlier and obtain an order of possession.

The tenant's application is seeking orders as follows:

1. For a monetary order for money owed or loss under the Act;
2. To allow a tenant to reduce rent for repairs, services or facilities agreed upon.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant's application is unrelated to the landlord's application. Although the tenant's application was filed first, I have determined the most urgent matter is the landlord's application for an order of possession.

I will, therefore, only consider the landlord's application for an order of possession. The tenant's application is dismissed, with leave to reapply.

Issue to be Decided

Should the landlord be entitled to an order of possession?

Background and Evidence

The tenancy began on October 1, 2016. Rent in the amount of \$1,000.00 was agreed upon, rent was reduced to \$800.00 and is payable on the first of each month. A security deposit of \$500.00 was paid by the tenant.

The landlord's agent testified that when they served the tenant with documents, that the tenant's boyfriend threatened and intimidated them. The agent stated that the tenant's boyfriend also sent a text message to the landlord stating that things would get very ugly.

The landlord's agent testified that the tenants were provided with a 24 hours for an inspection, stating the date and time as they are concerned for damages; however, when they attended the tenant and their boyfriend refused access and they are seriously concerned that the tenant is causing damage.

The landlord's agent testified that since the tenant filed their application the tenant has not paid any rent to the landlord, which has now put the landlord in a position of bankruptcy. The landlord's agent stated that the tenant was served with two 10 Day Notices to end Tenancy for Unpaid Rent, which rent was not paid and the tenant failed to move-out. The landlord stated that based on the above it would be unfair and prejudicial to have to file a new application or issue another notice to end tenancy.

The tenant testified that they do not know what was said by their boyfriend as he was working on their vehicle.

The tenant testified that they received a 10 Day Notice to End Tenancy for Unpaid rent, which they did not dispute. The tenant stated they have not paid any rent to the landlord for July, August, September, and October, as they believe the landlord has breached the Act.

The tenant's witness BS, testified that they have no evidence on the altercation between the tenant's boyfriend and the landlord. BS stated that the tenant told them they are purposely withholding rent, which they informed the tenant that they are not entitled to do so.

Analysis

Section 56 of the *Act* allows a landlord to request an order of possession to end the tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under Section 47 (1 Month Notice to End Tenancy for Cause) if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - 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, or
 - 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 rental unit or residential property;
- b) And 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 to take effect.

I am satisfied, based on the testimony and evidence provided by the landlord that the tenant's boyfriend intimidated and threatened the landlord when the landlord was serving documents on the tenant. This is supported by a text message sent to landlord by the tenant's boyfriend. The tenant's boyfriend had no rights to engaged with the landlord, as they are not a tenant under the tenancy agreement.

Further, I am satisfied that the tenancy legally ended, when the tenant failed to dispute the 10 Day Notice to End Tenancy for Unpaid. Although neither party provided a copy, they both agreed one was issued. Rent for four months has not been paid and has jeopardized the lawful rights or interest of the landlord, as the tenant does not have authority under the Act to withhold rent simply because they feel justified to do so, which has put the landlord in a position of bankruptcy.

Based on the above, I find it would be unfair to the landlord to wait for a notice to end the tenancy under Section 47 of the Act.

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application is dismissed with leave to reapply. The landlord's application to end the tenancy early and obtain an order of possession is granted.

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: October 24, 2017

Residential Tenancy Branch