



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") to end the tenancy early and obtain an Order of Possession. The Landlord also applied to recover the filing fee.

The Landlord appeared for the hearing and provided affirmed testimony and documentary evidence prior to the hearing. However, there was no appearance by the Tenants during the 30 minute hearing or any submission of evidence prior to this hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord testified that she sent the Tenants a copy of the Application, the Proceeding Package and her documentary evidence to the rental unit by registered mail on October 11, 2017. The Landlord provided a copy of the Canada Post tracking number and receipt into evidence to verify this method of service.

The Landlord explained that the documents were returned back to her as unclaimed. The Landlord testified that when she visited the rental unit on November 1, 2017, the notice card that had been left at the rental unit door by Canada Post had been torn up and thrown around the outside of the rental unit.

Section 90(a) of the *Residential Tenancy Act* (the "Act") provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service by failure or neglect to pick up mail.

Therefore, based on the undisputed evidence before me, I find the Tenants are deemed to have received the documents for this hearing on October 16, 2017 pursuant to Section 89(1) (c) and Section 90(a) of the Act.

Issue(s) to be Decided

Is the Landlord entitled to end the tenancy early and obtain an Order of Possession?

Background and Evidence

The Landlord testified that tenancy started on November 1, 2016. A written tenancy agreement was signed for a fixed term of one year due to expire on November 1, 2017. The tenancy agreement was not provided into evidence, but the Landlord testified the agreement shows that at the end of the fixed term, the tenancy ends and the Tenants must move out of the rental unit.

The Landlord testified that the Tenants paid \$750.00 as a security deposit and a \$150.00 pet damage deposit, both amounts which she continues to hold in trust.

The Landlord testified that the moment the tenancy began, the male Tenant started to become difficult and demanding. A property management company was hired to manage the tenancy. However, the female agent of the management company gave up on the tenancy after five months, citing the fact that she did not feel safe and was scared of the male Tenant because he constantly challenged and harassed her with complaints about issues with the rental unit.

The Landlord took over management of the rental unit thereafter and testified that she experienced the same angry, demanding and belligerent behaviour by the Tenant. In particular, the Tenant would threaten the Landlord about making payments to a company the Tenant was working for who was making repairs to the rental unit.

The Landlord explained that in June 2017 the Tenant filed an application against the Landlord to make repairs to the rental unit and for monetary compensation. The Landlord provided a copy of that Decision into evidence. The Landlord explained that the Tenant's application was dismissed because the Arbitrator who conducted that hearing was satisfied the Landlord was making repairs to the rental unit as these were ongoing.

The Landlord testified that she had attempted to visit the rental unit in the month of July and August 2017 in order to gain access to the rental unit to effect repairs. However, the Tenant had denied her entry into the rental unit.

The Landlord testified that the Tenant had been given notice of entry into the rental unit for September 23, 2017 to do some repairs. The Landlord attended the rental unit with a

handyman at which point the Tenant again refused entry and started to get angry shouting that he would become violent with the Landlord if she entered.

The Landlord provided a notarised statement from the handyman who witnessed the Tenant's threats on this date. The Landlord testified that she called police who attended the rental unit and spoke to the Tenant.

The police informed the Landlord that the Tenant was not going to leave the rental unit because he did not agree that the tenancy should end on November 1, 2017 pursuant to the tenancy agreement. The police advised the Landlord to file this Application. The Landlord provided the police file reference number and the contact card of one of the police officers for this hearing.

The Landlord testified that the Tenant has failed to pay rent for September and October 2017 and the Tenant is now over holding the fixed term tenancy.

The Landlord testified that on November 1, 2017 she again attended the rental unit with a police officer to do an inspection and to see if the Tenant had moved out pursuant to the end of the lease. However, when she tried to use her key to gain access, she discovered that the Tenant had changed the locks.

The Landlord concluded her testimony explaining that the Tenant has failed to pay rent for this tenancy and is now an over holding Tenant. The Landlord requests an Order of Possession because the Tenant has illegally changed the locks on the rental unit without her permission and she does not feel safe going to the rental unit or dealing with the Tenant due to his threatening behaviour and conduct.

Analysis

Section 56 (2) of the Act provides the circumstances in which a Landlord may apply to end the tenancy early as follows:

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.

[Reproduced as written]

An early end of tenancy is an expedited and unusual remedy under the Act and is only available to a landlord when the circumstances of the tenancy are such that it is unreasonable for a landlord to wait for the effective date of a notice to end tenancy under Section 47 of the Act for cause to take effect.

The Tenants failed to appear for the hearing to provide a preponderance of evidence to rebut the Landlord's evidence. Therefore, I make my findings on the balance of probabilities based on the undisputed evidence of the Landlord.

In this case, I am satisfied by the oral and written evidence provided by the Landlord that the Tenants failed to give access to the rental unit for the Landlord to inspect it on September 23, 2017 which is the reason why the police were called. I also find that the Tenant, since this time, has again failed to give access to the Landlord on November 1, 2017 and has now changed the locks to the rental unit.

Section 31 of the Act does not permit a tenant to change locks without the consent of the landlord. As a result, I am satisfied that the Tenant has seriously jeopardised the Landlord's lawful right to enter the rental unit under Section 29 of the Act.

In addition, I accept the Landlord's oral testimony and witness evidence, that on September 23, 2017, the Tenant made violent threats to the Landlord that she would be physically hurt if she were to enter the rental unit.

A physical threat of violence towards any party is a criminal offence and is unacceptable in any tenancy. Therefore, I am satisfied the Tenant has engaged in an illegal activity

that has caused the Landlord to now fear for her security, safety and well-being. I find these threats cannot be remedied expeditiously with a notice to end tenancy for cause.

As a result, I find this tenancy must end now under the provisions of Section 56 of the Act. As the Tenant is over holding the fixed term tenancy beyond the fixed end date without paying any rent, the Landlord is granted an Order of Possession which is effective two days after service on the Tenants. If the Tenants fail to vacate the rental unit, the order may then be filed and enforced in the BC Supreme Court as an order of that court.

Copies of this order are attached to the Landlord's copy of this Decision. The Tenants should note that they may also be liable for any enforcement costs incurred by the Landlord to obtain vacant possession of the rental unit.

As the Landlord has been successful in this matter, the Landlord is also entitled to the cost of filing fee. The Landlord may achieve this relief by deducting \$100.00 from the Tenants' security deposit as allowed by Section 72(2) (b) of the Act.

Conclusion

The Landlord is granted a two day Order of Possession to end the tenancy early. The Landlord may recover the filing fee from the Tenants' security deposit.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 03, 2017

Residential Tenancy Branch