



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order ending the tenancy early and an Order for Possession - Section 56;
and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord's evidence that the Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) in person on August 14, 2018 in accordance with Section 89 of the Act. The Landlord states that this service was witnessed by a neighbour. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy of an upper unit in a house started on January 7 or 8, 2018. Rent of \$700.00 is payable on or before the 2nd day of each month. At the outset of the tenancy the Landlord collected \$350.00 as a security deposit. The Landlord lives in the lower unit in the house.

The Landlord states that on July 5, 2018 the Landlord attending the Tenant's unit to ask for a set of keys to copy as the Landlord lost his set of keys. The Landlord state that the Tenant allowed the Landlord into the unit but believed that the Landlord's request was unreasonable. The Landlord states that he raised his voice to be more forceful at which point the Tenant told the Landlord to leave. The Landlord states that he did not leave and again asked for the keys. The Landlord states that the Tenant then hit the Landlord with a metal object similar to a hammer head. The Landlord states that he fell to the ground and as he was crawling out of the unit the Tenant again stuck the Landlord on the head. The Landlord states that the Tenant then lifted the Landlord up by the belt and threw him head first out of the unit and onto the ground.

The Landlord states that after he made it to his own unit he called the police and when they arrived the Landlord gave them a statement of the incident. The Landlord states that although he had visible bruises and a cut that was bleeding he did not go to the hospital as it would take 4 or 5 hours to be seen. The Landlord states that no charges were laid as there was no witness to the incident and the Tenant denied assaulting the Landlord. The Landlord states that no stiches were required for the cut and that he has not seen a medical doctor since the incident. The Landlord states that as a result of the assault the Landlord was unable to sleep for a few nights thereafter due to swelling and that he had some difficulty with his jaw and eating.

The Landlord states that he was also assaulted by the Tenant on a previous occasion and that this was reported to the police as well. The Landlord states that no charges were laid in relation to this earlier incident. The Landlord states that on a date following the incident a guest of the Tenant was in the driveway when the Landlord was leaving and that this guest told the Landlord: "don't come near me" and "I'm not afraid of an assault charge" and "I'll punch you in the face". The Landlord states that since the incident he has avoided the Tenant and has not disagreed with any requests of the

Tenant. The Landlord states that the Tenant does drugs in the unit and has not paid rent for August or September 2018.

The Landlord states that it took him a month to make the application because he is blind in one eye and has difficulty with his sight from the other eye. The Landlord states that he also could not operate his computer and had many and repeated difficulties making the application over the computer with the program used by the Residential Tenancy Branch (the "RTB"). The Landlord states that he is 71 years old and that the Tenant is 69 years old. The Landlord states that the service BC agency would not assist the Landlord with uploading his application and told the Landlord to do it himself on his own computer. The Landlord states that he also has difficulties with drinking alcohol that has occurred since the Tenant moved into the upper unit. The Landlord states that he does not understand all the steps that need to be taken to end a tenancy. The Landlord states that for all these reasons he was not able to make an application sooner.

It was noted that one document that the Landlord uploaded for the RTB as evidence could not be opened. The Landlord states that every computer should be able to open the document. The Landlord was informed that if the Landlord considered the document to be vital to its application an adjournment could be considered or the Landlord could describe the contents of the document. The Landlord described the contents of the document as being primarily information sent to the police that the Landlord wanted to ensure was in the police report. The Landlord states that that document sets out that on the night of the incident a weapon was used, that the Landlord had a visible bump on the night of the incident, that the police asked the Landlord if he wanted to go to the hospital, that when the police arrived the Landlord was still in shock and gasping for air, and that the police noted that the Landlord's hands were clean with no broken skin.

Analysis

Section 56 of the Act provides that a landlord may make an application to end a tenancy earlier than it would end if the landlord issued a one month notice to end tenancy for cause and that the Landlord may obtain an Order of Possession in certain circumstances. It is not necessary for the landlord to issue the one month notice however, the landlord must show that:

- (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.

Upon consideration of the undisputed evidence before me, I am satisfied that the Landlord faces serious jeopardy and that it would be unreasonable or unfair to the Landlord to wait for a one month notice to end the tenancy for cause to take effect. Accordingly, I find that the Landlord is entitled to an early end to the tenancy and an Order of Possession. The tenancy therefore ends and the Tenant must vacate the rental unit two (2) days after service of the Order of Possession provided to the Landlord with this decision.

As the Landlord's claim has been successful I find that the Landlord is entitled to recovery of the **\$100.00** filing fee and the Landlord may deduct this amount from the security deposit of \$350.00 in full satisfaction of the claim.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: September 21, 2018

Residential Tenancy Branch