



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

CORRECTED DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for an early termination of tenancy and Order of Possession, pursuant to section 56.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:45 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that he posted the notice of dispute resolution package on the tenant's door on February 3, 2019. I find that the tenants were deemed served with this package on February 6, 2019, three days after its posting, in accordance with sections 89(2)(d) and 90 of the *Act*.

I note that Section 78 of the *Act* states that the director may, with or without a hearing:

- (a) correct typographic, grammatical, arithmetic or other similar errors in his or her decision or order,
- (b) clarify the decision or order, and
- (c) deal with an obvious error or inadvertent omission in the decision or order.

Issue(s) to be Decided

1. Is the landlord entitled to an early termination of tenancy and Order of Possession, pursuant to section 56 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided undisputed testimony that this tenancy began in September 2018 and is currently ongoing. Monthly rent in the amount of \$1,200.00 is payable on the first day of each month. No security or pet damage deposits were paid. The subject rental property is a basement suite and the landlord lives in the upper portion of the house.

The landlord testified that he believed the tenants were in the process of moving out but wanted to continue with this application in case the tenants failed to vacate in a timely manner.

The landlord provided the following undisputed testimony. On the evening of January 25, 2019, he was in his garage when tenant A.M. walked by. The landlord and the tenant exchanged words evidencing their dislike of each other. The landlord asked tenant A.M. when he was going to get out of his house and tenant A.M. responded by throwing the landlord to the ground.

The landlord provided the following undisputed testimony. When tenant A.M. threw the landlord to the ground, the landlord's hip was broken, and he was taken to hospital. The landlord required hip replacement surgery and spent approximately six days in hospital.

The landlord entered into evidence the hospital records from his stay which state that the landlord, age 72, required a hip replacement after he was pushed over in an altercation with a tenant on January 25, 2019. The landlord's x-ray summary of his pelvis and hip was also entered into evidence and states that the landlord ~~tenant~~ suffered an impacted right femoral neck fracture.

The landlord testified that the police were called, and charges have been laid against tenant A.M. as a result of this incident.

The landlord testified that he has now returned home from the hospital and has been instructed to walk to aid in his recovery; however, the landlord testified that he has not walked as much as he should because he is afraid to go outside as he may encounter tenant A.M. The landlord testified that he feels trapped in his house.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

it would be unreasonable, or unfair to the landlord, the tenant 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.

An early end of tenancy is an expedited and unusual remedy under the *Act* and is only available to the 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 to

take effect, such as a notice given under Section 47 of the *Act* for cause. At the dispute resolution hearing, the landlord must provide convincing evidence that justifies not giving full notice.

I accept the landlord's testimony of events concerning the altercation with tenant A.M. that occurred on January 25, 2019. The landlord's testimony is supported and affirmed by the medical records he entered into evidence. Based on the above, I find that tenant A.M. seriously jeopardized the health and safety of the landlord by physically throwing him to the ground and fracturing his hip.

I find that it would be unreasonable for the landlord to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect given the severity of the injury suffered by the landlord and the going impact tenant A.M.'s presence has on the landlord. I therefore find that pursuant to sections 55 and 56 of the *Act*, the landlord is entitled to a two-day Order of Possession.

Conclusion

Pursuant to sections 55 and 56 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants fail to comply with this Order, this Order may be filed 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: March 01, 2019

Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON **March 14, 2019**
AT THE PLACES INDICATED **BY UNDERLINING OR USING ~~STRIKETHROUGH~~**.