



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing originally convened on April 26, 2019 and was adjourned to May 2, 2019 due to time constraints. These hearings 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; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Counsel for the landlord submitted that the tenant was served with the landlord's application for dispute resolution on March 31, 2019 via registered mail. The tenant testified that he received the landlord's application for dispute resolution on April 2, 2019. I find that the tenant was served with the landlord's application for dispute resolution in accordance with section 89 of the *Act*.

Preliminary Issue- Late Evidence

Counsel for the landlord submitted that the landlord's evidence package was posted on the tenant's door on April 11, 2019. The tenant testified that he received the landlord's evidence package on April 12, 2019.

The landlord applied for dispute resolution on March 28, 2019.

Both parties agreed that the tenant provided the landlord with his evidence package through a mail slot on April 21, 2019. The tenant's evidence package included a

detailed response to the landlord's evidence. The tenant testified that he had time to review and respond to the landlord's evidence package. The tenant is seeking to have the landlord's evidence excluded because it was not served with the landlord's application for dispute resolution.

Counsel for the landlord submitted that since the tenant had time to review and respond to the landlord's evidence the landlord's evidence should be admitted. Counsel argued that if the landlord's evidence was excluded for being late, the tenant's evidence should also be excluded for being late.

Both parties agreed that the tenant was served with a second evidence package containing telephone intercom records for the subject rental property a few days before the hearing. The tenant testified that while these records were served on him late, he had time to review and respond to them and would like them to be considered in evidence.

The resident manager testified that the tenant was served with a third evidence package on April 30, 2019 and a fourth evidence package on May 1, 2019. The tenant testified that he received the third evidence package on April 30, 2019 but did not receive the fourth evidence package.

Section 3.2 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") states that when a landlord is seeking an early end to the tenancy, the landlord must submit all evidence with the Application for Dispute Resolution, or, when applying using the Online Application for Dispute Resolution, the next day. All evidence to be relied on at the hearing must be served on the respondent with the Notice of Dispute Resolution Proceeding Package described in Rule 3.1.

Section 3.15 of the *Rules* states that the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Section 3.11 the *Rules* state that if the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

In determining whether the delay of a party serving their evidence package on the other party qualifies as unreasonable delay I must determine if the acceptance of the

evidence would unreasonably prejudice a party or result in a breach of the principles of natural justice and the right to a fair hearing. The principals of natural justice regarding the submission of evidence are based on two factors:

1. a party has the right to be informed of the case against them; and
2. a party has the right to reply to the claims being made against them.

In this case, the tenant testified that he had time to review and respond to the evidence contained in the landlord's first and second evidence packages. I find that the tenant was informed of the case against him and was able to review and respond to the first and second evidence packages provided by the landlord. I accept the landlord's first and second evidence packages into evidence and find that the tenant was served with the landlord's first and second evidence packages in accordance with section 88 of the *Act*.

Counsel for the landlord did not dispute the landlord's ability to respond to the tenant's evidence. I find that the landlord was informed of the tenant's position and was able to review and respond to the tenant's evidence. I therefore accept the tenant's evidence package into evidence and find that the landlord was served with the tenant's evidence package in accordance with section 88 of the *Act*.

The Interim Decision dated April 26, 2019 ordered that neither party was permitted to submit additional evidence between the April 26, 2019 and today's hearing. I therefore find that the landlord's third and fourth evidence packages are not admitted into evidence.

Issues 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*?
2. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. In this decision, I will only address the facts and evidence which underpin my findings and will only summarize and speak to the points which are essential in order to determine whether or not the tenancy will continue or end. Not all documentary

evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agreed to the following facts. This tenancy began in July of 2017 and is currently ongoing. Monthly rent in the amount of \$1,950.00 is payable on the first day of each month. A security deposit of \$938.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenant lives on the 7th floor of a 12-story apartment building.

Counsel for the landlord testified that this application stems from the conduct of the tenant during the course of his tenancy with a triggering incident occurring on March 26, 2019.

The resident manager testified that on March 26, 2019 he received a call from a female tenant who lives on the floor above the tenant. The female tenant told the resident manager that a man carrying a duffle bag followed her into the building and was acting suspicious. The man told the female tenant that he was staying with the tenant. The resident manager testified that after receiving the telephone call from the female tenant he went to the tenant's apartment and heard a fight. The resident manager testified that he then called 911. The police told him to stay in the stairway and ensure that no-one entered the 7th floor. When the police arrived on the scene the resident manager went to the front door to let them in. While the resident manager was letting the police in, the male who followed the female tenant into the subject rental building fled out the back door of the subject rental building.

The tenant testified that he was asleep in his apartment and that an assailant armed with a gun, who was unknown to him, assaulted him in his home. The tenant testified that he did not know how the assailant gained access to his apartment because only he and the resident manager had a key to his apartment. The tenant testified that he believes the resident manager helped to orchestrate the assault on the tenant by providing the assailant with a key to his apartment. The tenant testified that in the past the resident manager has accessed his apartment without providing 24 hours' notice. The tenant testified that the relationship between himself and the resident manager was acrimonious.

The resident manager testified that he had nothing to do with the assault on the tenant and did not provide a copy of the tenant's key to the assailant. The resident manager denied ever entering the tenant's apartment without proper notice or consent.

The resident manager testified that after the police arrived, they posted police outside the tenant's apartment until approximately 12:00 a.m. when a search warrant was obtained, and the tenant's apartment was searched by a SWAT team. The resident manager testified that the tenant was arrested, and the police told the resident manager that the tenant was arrested for the purposes of trafficking drugs and that the search of the subject rental property was "productful".

The property manager testified to the following facts. After the tenant was assaulted on March 26, 2019 the tenant telephoned him and told him that he was robbed of \$10,000.00 in cash and was pistol whipped. The property manager asked the tenant if he reported the theft to the police and the tenant responded, "no [property manager], it was cash".

The tenant testified that the assailant did not rob him. In the tenant's written submissions, the tenant submitted on page 39 of his evidence package that he was robbed. Later in the tenant's testimony, the tenant testified that he keeps cash in the subject rental property because he shared a bank account with an abusive ex-boyfriend and he does not want the abusive ex-boyfriend to take his money. The tenant testified that last year while he was on vacation, \$10,000.00 in cash was stolen from his apartment and he suspects it was the resident manager. The tenant testified that he did not file a police report regarding this theft.

The resident manager testified that the other residents at the subject rental property are fearful of the tenant and are fearful of the criminal element he brings to the building. The landlord entered into evidence a number of anonymous testimonials from various tenants of the subject rental building. The resident manager testified that the testimonials are anonymous because the tenants fear reprisal from the tenant. Most of the testimonials state that the author is frightened of the tenant after the March 26, 2019 incident.

One anonymous letter dated March 27, 2019 states:

What frustrates me the most about having to write this letter is that I feel like I cannot offer full disclosure on my experiences with [the tenant] because at this point, I fear for my safety....This isn't a case of a tenant selling a little bit of weed to his friends here and there. The situation that [the tenant] has brought into the building has been known to be sketchy for almost the entire duration of his tenancy here. An influx of sketchy people coming in and out of the building, an increase in bike theft and break-ins from the bike room, and [the tenant] himself,

loading large bags in an out of the building in the middle of the night, and even in the middle of the day, on multiple occasions.

Another anonymous letter states in part:

We have made you aware of the fact that [the tenant] has sketchy looking people going in an out of his apartment at all hours of the day and night, almost always for 5 minutes or less at a time.

Only one of the testimonials was signed by a resident. The resident in question was the resident whom the assailant followed into the subject rental property. The testimonial states in part:

Our bike room has been aggressively broken into numerous times and I believe it is directly correlated with the type of people that [the tenant] has been lettering loiter in front of your building and in the lobby....

All of [the tenant's] "friends" are clearly coming from a life of substance abuse and I have always believed he was a drug dealer and they were his runners....

The above testimonial goes on re-count her version of events on March 26, 2019, including the following:

The man was dressed like someone about to commit a crime and was carrying a large duffle bag. He stepped out of my field of vision when he got off the elevator to get a weapon out of his bag and then enter [the subject rental property] where he began to beat [the tenant] and request [the tenant's] stash be handed over. According to [the tenant] during his arrest, the man had a gun and had pistol-whipped him with it and was trying to zap strap his wrists together. He stated he wanted all of [the tenant's] stash and [the tenant] kept yelling for help. The man told him to stop yelling because the cops would come- something he didn't believe either of them would to happen [sic] since the apartment is filled with illegal drugs.

The tenant testified that there is no way the resident could have heard his conversation with the assailant as she lives on a different floor. The tenant denied being pistol whipped and denied that the assailant wanted drugs. The tenant testified that the increase in bike thefts started when the resident manager started working at the subject rental property.

The tenant testified that the testimonials are all similar in nature because the tenants were told that he was a danger by the resident manager, not that they felt this way on their own without prompting. The tenant testified that the other residents of the subject rental property have been fed a narrative and are just parroting it back.

The resident manager testified that when the police attended at the subject rental property on March 26, 2019, they told him to seek an emergency eviction order as the tenant poses a risk to other residents at the subject rental building

The resident manager testified to the following facts. The resident manager requested a copy of the police file relating to the March 26, 2019 incident on March 28, 2019. The request for information dated same was entered into evidence. The police department responded to the resident manager via e-mail and attached a letter dated April 1, 2019 which states:

We are unable to provide access to the requested information at this time. Your request is for records that relate to charge approval by Crown. The *Freedom of Information and Protection of Privacy Act (the "Act")* does not apply to these records until the matter has been completed (s15(1)(g)).

When the criminal matter to which this file relates is concluded, we encourage you to write to us and again request a copy of this record. We would be please to process your request at that time.

The April 1, 2018 letter was entered into evidence.

The resident manager testified that he responded to the April 1, 2019 letter via email on April 1, 2019. The resident manager asked the police if they had any advice on how to best evidence the landlord's emergency eviction application. On April 2, 2019 the police department responded via email stating:

Unfortunately until the matter has been completed the [police] cannot release any information. If charges are approved and the case goes to Court, Crown Counsel will be the ones to contact to obtain information. However if charges are not approved then we will be able to release information to you. Of course this will all take time and will be past your deadline of April 11th.

What we usually advise people in your situation to do, is to provide the Residential Tenancy Branch with our letter explaining that the file exists and that it is going before Crown for Charges.

Principle H.G. testified to the following facts. Principle H.G. purchased the subject rental building in the late 1970's. After the March 26, 2019 incident principle H.G. hired a security company to monitor the subject rental building because the tenants of the subject rental building were fearful of the tenant and the people he allows and or attracts to the subject rental building. Since his purchase of the building in the 1970's, this is the first time a security company has been employed to protect the residents of the building.

The landlord entered into evidence security reports from April 4-8, 2019 showing that people went to the 7th floor at varying times of the day and night staying for varied amount of time from 9 minutes and upwards. The resident manager testified that the number of visitors received by the tenant decreased markedly once the tenant received the landlord's first evidence package.

The tenant testified that other people live on the 7th floor so the security reports are not indicative of the guests he had in his apartment. The tenant testified that the number of guests he received dwindled because his guests were being harassed by the security company and they did not want to deal with confrontations.

The landlord entered into evidence intercom telephone records which show that an Alberta number received the following calls:

- November 26, 2018- December 25, 2018: tenant was called 48 times;
- December 26, 2018- January 23, 2019: tenant was called 25 times;
- January 24, 2019- February 26, 2019: tenant was called 36 times; and
- February 28, 2019 to March 26, 2019: tenant was called 25 times.

The tenant confirmed that the Alberta number on the phone records is his number. The resident manager testified that the intercom telephone records only show long distance telephone numbers. The next most frequently appearing number showed the following number of calls:

- November 26, 2018- December 25, 2018: resident was buzzed 14 times;
- December 26, 2018- January 23, 2019: resident was buzzed 14 times;
- January 24, 2019- February 26, 2019: resident was buzzed 16 times; and
- February 28, 2019 to March 26, 2019: resident was buzzed 4 times.

The resident manager testified that other units are called considerably less frequently than the tenant and that the tenant is called frequently because he traffics drugs.

The tenant testified that he has a lot of visitors because he has a social life and a sex life. The tenant denied trafficking drugs.

The resident manager testified to the following facts. The resident manager suspected that the tenant was a drug dealer since he moved in due to the frequent traffic in and out of his apartment. The resident manager's suspicions were heightened in the beginning of 2018 when the intercom for the subject rental building stopped working for approximately six weeks. This disruption in service prevented visitors to the subject rental building from being buzzed in. Residents had to physically come to the front door to let their guests in. During this six-week period of time the resident manager witnessed the tenant frequently, at all times of the day and night, come down to vehicles waiting outside and hand envelope(s) to the occupants of the waiting vehicles.

The resident manager testified to the following facts. After witnessing the tenant give envelopes to non-residents, the resident manager took his suspicions of the tenant dealing drugs to the police. In March of 2018 the tenant was arrested for trafficking drugs. The landlord entered into evidence an e-mail from a police officer dated March 7, 2018 which states:

We arrested [the tenant] the other night for possession for the purposes of trafficking drugs but were not able to get charges. Please keep that to yourself though and we will continue to target him. We did seize drugs and cash off him. It would be good to know if his activity slows from here on in.

The tenant did not dispute that he was arrested in March of 2018 but testified that he was not charged with anything as a result of that arrest. The tenant denied that he was or is trafficking drugs.

The resident manager testified that in July of 2018 the tenant approached him and said: "[resident manager] you are a total piece of shit of a human being. Don't worry you're going to get what's coming to you real soon." The resident manager testified that he didn't file a police report at that time because he thought it was an idle threat. The resident manager testified that he regrets not filing a police report. The resident manager testified that since the tenant has accused him of orchestrating the assault he fears for his safety from the tenant and or the tenant's associates. The tenant denied threatening the resident manager and denied saying the above quotation. The tenant testified that he is a good tenant and entered into evidence a positive reference from his previous landlord with whom he resided from 2010 to 2017. The tenant also entered into evidence positive guest reviews from a vacation rental website.

The tenant testified that he is employed full time as a draftsman and that he works from home. The landlord entered into evidence a letter from his employer which states that he has been employed on a full-time basis since March of 2017 and has been an outstanding member of the team.

Counsel for the landlord submitted that she completed a corporate search of the tenant's employer and found that no such company is currently active. Counsel for the landlord submitted that she looked up the stated address of the tenant's employer and that this address is a residential building and that a suite number was not provided on the letter of reference. Counsel for the landlord submitted that the tenant's letter of employment is fraudulent.

The tenant testified that he doesn't want his employer involved and so decided not to call him as a witness or provide his employer's full address. No further evidence was entered into evidence confirming the tenant's employment. The tenant testified that someone called his employer claiming to be from the Residential Tenancy Branch. Counsel submitted that she did not contact the tenant's employer.

Counsel for the tenant submitted that the landlord has established on a balance of probabilities that an Order ending the tenancy early pursuant to section 56(1)(2) and (3) of the *Act* is warranted. In particular:

- a) The evidence shows that the tenant is either directly participating in or allowing persons he is permitting on the property to engage in the purchase of drugs;
- b) The evidence shows that the tenant's activity is promoting the sale and purchase of drugs on the property;
- c) The evidence shows that the tenant's activity is promoting the presence of drug dealers and or dangerous individuals on the property and their presence threatens the safety and well-being of all in the building; and
- d) The evidence shows that the tenant's conduct and or the conduct of persons he has permitted on the property have significantly interfered with and unreasonably disturbed other residents at the subject rental building.

At the end of the hearing the tenant testified that his lawyer told him that he was not going to be charged with anything. This was the first mention of the tenant being represented by a lawyer. No documentary evidence supporting the above testimony was entered into evidence.

Analysis

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

In this case I find that the tenant's testimony is not in harmony with the resident manager's testimony, the property manager's testimony, the signed testimonial or the anonymous testimonials. I note that the tenant's testimony during the hearing contradicted his written submissions. The tenant's written submissions state that he was robbed, but in his oral testimony, the tenant testified that he was not robbed. I also note that the tenant testified that his employer provided the letter of employment that he entered into evidence and later stated that he chose not to provide his employer's full address because he did not want his employer involved. This implies that he is the author of the letter of employment. I find that on a balance of probabilities, the letter of employment is fraudulent.

The tenant testified that he keeps large sums of cash in his apartment because he shares a bank account with an abusive ex-boyfriend. I find that this practice would only be reasonable as a short-term solution as the tenant could open a new bank account in his name and deposit the money. I find that a practical and informed person would readily recognize that it is unreasonable to keep large sums of cash in your apartment if it is obtained legally.

Based on the above I find that the tenant's testimony is not in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances. For the above stated reasons, where the testimony of the tenant and the resident manager, property

manager and residents differ, I accept the resident manager, property manager and residents' version of facts over that of the tenant's.

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.

Rule 6.6 states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the onus is on the landlord to prove that the tenant breached section 56 of the *Act*.

The tenant acknowledged that he was arrested on two occasions on the suspicion of trafficking drugs and the landlord has submitted evidence that charges for drug trafficking are currently before Crown Counsel. Several residents stated that they have witnessed the tenant have numerous visitors to the subject rental property for very short periods of time which they suspect is for the purpose of selling drugs. The resident manager testified that he witnessed the tenant providing envelopes to vehicles waiting outside of the subject rental building when the intercom system was down. The intercom

records show that the tenant is frequently called. I find that the above stated evidence, when looked at collectively, shows that it more likely than not that the tenant was/is selling/trafficking drugs out of his apartment.

Trafficking drugs is an illegal activity. I find that the tenant's drug trafficking involved him with dangerous people and brought those dangerous people into the subject rental building. I find that while the tenant did not invite his assailant into the subject rental building, the assailant would not likely have attended at the subject rental building had the tenant not been engaged in drug trafficking. I find that the tenant's drug trafficking has adversely affected the quiet enjoyment, security, safety or physical well-being of the other occupants at the subject rental property not only on March 26, 2019 but on a regular basis when drug clientele attended at the subject rental building.

In these circumstances, I find that it would be unreasonable to the landlord and 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. I therefore find that the landlord is entitled to a two-day Order of Possession, pursuant to section 56 of the *Act*.

I note that the tenant is not being evicted because he was assaulted, but because his drug trafficking has adversely affected the quiet enjoyment, security, safety and physical well-being of the other occupants at the subject rental building.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

Conclusion

Pursuant to section 55 and 56 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant 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: May 03, 2019

Residential Tenancy Branch