



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

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; 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.

The landlord testified that he served the tenant with his application for dispute resolution via registered mail on June 15, 2019. The tenant testified that he received the landlord's application for dispute resolution on or around the Saturday before this hearing. 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- Tenant's Evidence

The tenant testified that he accidentally uploaded the evidence for today's hearing to another application for dispute resolution he has made against the landlord. The tenant testified that his girlfriend hand delivered the evidence to the landlord on June 26, 2019. A proof of service document was not uploaded to either file.

The landlord testified that he did not receive the tenant's evidence package and that the tenant's girlfriend did not hand deliver it to him.

During the hearing I allowed the tenant to upload the evidence he allegedly served on the landlord; however, I informed both parties that I would determine if the evidence would be accepted after the hearing.

The testimony of the parties in regard to the service of the tenant's evidence is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find that the tenant has failed to prove that his evidence was served on the landlord.

Section 3.15 of the *Rules* states that the Respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. In this case, I find that the tenant has failed to prove that his evidence was served on the landlord and the tenant failed to upload his evidence to the correct file with the Residential Tenancy Branch, thereby breaching rule 3.15. I therefore find that the tenant's evidence is excluded from this proceeding.

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 tenant, 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. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy is currently ongoing. Monthly rent in the amount of \$1,000.00 is payable on the first day of each month. The subject

rental property is a basement suite and the landlord lives in the house above the basement suite.

The landlord testified to the following facts. On June 11, 2019 the tenant banged on his front door and when he answered the door the tenant threatened him with a knife. The tenant also screamed racial slurs and obscenities at the landlord when the landlord opened the front door. The landlord then called the police. The tenant walked away from the landlord's front door and the landlord witnessed the tenant slash the tires on his truck. The landlord entered into evidence a photograph of his truck in which the front right tire can be seen to be flat.

The tenant denied all of the landlord's above testimony, stating that it is all a fabrication and did not occur.

The landlord called his neighbour, witness J.E. to testify. Witness J.E. testified that on June 11, 2019 he was in his yard watering plants when he heard yelling coming from the landlord's house. Witness J.E. testified that he heard the tenant aggressively yell at the landlord "fuck you, you Hindu", and "get out here you pussy". The Witness testified that he did not see the altercation between the landlord and the tenant.

Both parties agree to the following facts. On June 11, 2019 the RCMP attended and arrested the tenant. The tenant is currently out on bail and is not permitted to attend at the subject rental property. The tenant has an upcoming court date regarding the landlord's allegations.

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.

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, the landlord's testimony as to the events occurring on June 11, 2019 is in harmony with that of witness J.E. That is to say that witness J.E. independently provided his recollection of the events of June 11, 2019 and his testimony was consistent with the testimony of the landlord. It is the recollection of the tenant which is

inconsistent with the other testimony provided at the hearing. I therefore accept the landlord's version of facts over that of the tenant's.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure 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.

I find that the landlord has proved, on a balance of probabilities, that the tenant threatened him with a knife. I note that the burden of proof under the *Act*, is not as high as the burden of proof required in criminal matters.

I find that the tenant's actions on June 11, 2019 significantly interfered with and unreasonably disturbed the landlord. I find, given the threat of violence, it would be unfair and unreasonable for the landlord to wait for a notice to end tenancy under section 47 of the *Act*. I therefore find that the landlord is entitled to a two-day Order of Possession against the tenant.

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

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 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.

I issue a Monetary Order to the landlord in the amount of \$100.00.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: July 03, 2019

Residential Tenancy Branch