



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING ADVISORY
ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on August 29, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession pursuant to section 56 of the *Act*; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by J.B., L.R., and B.V. B.B., a witness for the Landlord, also attended the hearing. The Tenant attended the hearing and was assisted by E.R., a legal advocate, who spoke on behalf of the Tenant. A witness, B.F., also attended the hearing in support of the Tenant. J.B., L.R., B.V., B.B., the Tenant, and B.F. provided a solemn affirmation at the beginning of the hearing.

On behalf of the Landlord, J.B. testified the Application package was served on the Tenant in person on September 18, 2019. E.R. acknowledged receipt on that date on behalf of the Tenant. In addition, E.R. advised the Landlord was served with the Tenant's documentary evidence in person on September 20, 2019. J.B. acknowledged receipt. No issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents are sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord wishes to end the tenancy. J.B. described the Tenant's activities which she suggested were suspicious of criminal activity and disrupted other occupants in the rental property. First, J.B. testified the Tenant has given keys to her unit to 5 unknown men and that this presents a risk to other tenants.

Second, J.B. testified the Tenant allows unknown dogs onto the rental property.

Third, J.B. testified that video surveillance confirms multiple suspicious visits to her rental unit and that this is indicative of criminal activity. According to J.B. as many as 30 visitors attended the Tenant's rental unit in a relatively short period of time on August 23, 2019. Although J.B. testified that hundreds of videos were available, only 18 surveillance videos were submitted in support.

Fourth, J.B. expressed concerns about the activities of the Tenant's boyfriend and his potential involvement in a shooting (not at the Tenant's rental unit). J.B. submitted that these incidents have disrupted the peace and enjoyment of other tenants, and present a risk for families living in the rental property. J.B. confirmed the Landlord strives to maintain a crime free environment.

In addition, the Landlord submitted a list of emails from another occupant in the building, J.U. The emails were dated between May 24 and August 26, 2019. Most appear to be related to the Tenant's rental unit, but no content was provided.

In reply, E.R. denied the Tenant is doing anything wrong. Addressing the 18 videos submitted by the Landlord, E.R. advised that the individuals depicted are friends and

family. E.R. provided an explanation for several of the visits but confirmed nothing illegal is occurring. E.R. also advised that the Tenant is selling some items through an online marketplace. A number of Used Victoria advertisements were submitted in support. The Tenant also submitted a clearance letter regarding a criminal record check completed on April 23, 2019. The clearance letter confirmed the Tenant has no criminal record that would prevent her from working with children.

E.R. also referred to a letter from another tenant in the building, dated September 20, 2019, in which the writer advises the Tenant “causes no issue...[is] always kind and friendly...is very sweet and well put together”. The writer indicated she does not feel unsafe.

Analysis

Based on the unchallenged documentary evidence and affirmed oral testimony, and on a balance of probabilities, I find:

Section 56 of the *Act* permits a landlord to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the *Act*.

The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2) of the *Act*, which states:

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...

- (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 landlords 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.

[Reproduced as written.]

In this case, I find there is insufficient evidence before me to conclude the Landlord is entitled to an order of possession on the basis that the Tenant poses an immediate and severe risk to the Landlord or other occupants. I find that the evidence and submissions of the Landlord raises concerns that are largely speculative and are not fully supported by the evidence. For example, while I accept the Tenant has had numerous visitors attend at her front door, this in and of itself is not conclusive of criminal activity. Although J.B. advised there were hundreds of videos available, some depicting suspicious transactions, these transactions were not supported in the video evidence. Further, while I accept that the Tenant and her guests have caused some disruption to the Landlord and other occupants, I find the disruption is not sufficient to end the tenancy on an urgent basis. I also note the complaints to the Landlord appear to be originating from one individual.

Further, in these circumstances, I find it would be reasonable and fair to the Landlord to wait for a notice to end the tenancy under section 47 of the *Act*.

In light of my findings above, I order that the Application is dismissed, without leave to reapply. The tenancy will continue until otherwise ended in accordance with the *Act*.

Conclusion

The Application is dismissed, without leave to reapply. The tenancy will continue until otherwise ended in accordance with the *Act*.

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 27, 2019

Residential Tenancy Branch