



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
INC. and [tenant name suppressed to protect privacy]

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 for Possession due to the tenant posing an immediate and severe risk to the rental property pursuant to section 56 of the *Act*.

The landlord's agents L.B. and D.J. attended on behalf of the corporate landlord at the date and time set for the hearing of this matter and are herein referred to as "the landlord". The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:30 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding for this hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm that they had served the tenant with the Notice of Dispute Resolution Proceeding for this hearing. The landlord's agent L.B. testified that he had served the tenant with the notice of this hearing and his evidence in a package that was posted on the tenant's rental unit door on October 4, 2019, and submitted into documentary evidence a Proof of Service form (#RTB-9) signed by landlord's agent D.J. who witnessed the service and testified to this at the hearing.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or ‘deemed’ received on the third day when it is served by posting on the door.

As such, I find that the tenant was served with the notice of this hearing in accordance with section 89 of the *Act* and deemed to have received the notice of this hearing on October 7, 2019, the third after posting, in accordance with section 90 of the *Act*.

The landlord testified that the tenant was served with both documentary and digital evidence. The digital evidence, consisting of videos, was contained on a USB included in the package that was posted to the tenant’s door with the Notice of Dispute Resolution Proceeding. The landlord completed and submitted a Digital Evidence Details form (#RTB-43) however the landlord acknowledged that they never confirmed with the tenant that he was able to access the digital evidence served on the tenant. Further, I found that some of the digital evidence submitted by the landlord to the Residential Tenancy Branch was not in an acceptable file format, and therefore I was unable to view it.

Rule 3.10.5 of the Residential Tenancy Branch Rules of Procedure sets out the requirements for a party to confirm access to digital evidence, as follows, in part:

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence.

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

[My emphasis added]

In accordance with Rule 3.10.5, given the fact the landlord failed to confirm that the tenant was able to access the digital evidence, and given the fact that I was unable to several of the video digital files submitted by the landlord, which raises doubt that the tenant would have had success accessing all of the digital evidence, I find that the landlord's digital evidence will not be considered in this matter, only the documentary evidence served on the tenant and provided to the Residential Tenancy Branch has been considered.

Issue(s) to be Decided

Is the landlord entitled to an early end to this tenancy and an Order of Possession pursuant to section 56 of the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence. The landlord confirmed the following terms of the tenancy:

- This tenancy began October 1, 2017 and is currently a month-to-month tenancy.
- Current monthly rent of \$550.00 is payable on the first day of the month.
- The tenant paid a security deposit of \$275.00 at the beginning of the tenancy, which continues to be held by the landlord.

The landlord's Application for Dispute Resolution provided the following reasons for seeking an early end of the tenancy:

[Tenant] has an increasing amount of guest activity to his unit that resulted in a violent incident on September 16th, 2019, including firearms being discharged in his unit. [Police] provided a General Occurrence Hardcopy Synopsis of the incident with the File No. [police file number]. Please find attached video footage of the incident.

[Reproduced as written except for anonymization of information]

On the landlord's Application for Dispute Resolution, under the heading "APPLICANT INFORMATION ON REASONS FOR REQUESTING AN EXPEDITED HEARING" I note that the landlord has provided the following arguments on why this hearing required scheduling on an expedited basis, as follows:

An increasingly dangerous amount of guest activity to [tenant's unit] has resulted in a firearm being discharged with multiple gunshots on September 16th, 2019. Tenant has not taken responsibility for his guest traffic who have seriously disturbed and jeopardized the health and safety of his neighboring tenants as well as the staff who work at the building.

The landlord provided unchallenged testimony that on September 16, 2019, three armed assailants gained entry into the rental property and attempted to break into the tenant's rental unit. The assailants managed to force in the tenant's door enough to shoot at least one bullet into the tenant's rental unit. Fortunately, no one was injured in the attack, however, the landlord testified that there had been two staff members on the floor at the time, and that the staff rental office is located below the tenant's rental unit. The landlord testified that the incident is still under police investigation. In support of his testimony, the landlord submitted a police general occurrence synopsis report about the incident. I note in the police report that statements from the landlord's staff indicate that suspected gang members had been residing in the tenant's rental unit.

The landlord testified that there had been previous issues involving the tenant. January 22, 2019, the tenant entered another rental unit in the building and discharged bear mace. On April 13, 2019, the tenant's guest was involved in a physical assault with a baseball bat involving another resident of the building.

The landlord confirmed that police involvement was required for all three of the above-noted incidents and submitted copies of the breach of tenancy letters submitted to the tenant for each of the incidents.

The landlord testified that the tenant had also failed to pay rent and as such a 10 Day Notice to End Tenancy for Unpaid Rent had been issued against the tenant.

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 of the *Act*, I need to be satisfied that the tenant or their guest 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.

As outlined above, there are clearly two separate components to section 56 of the *Act*, both of which need to be met in order for a landlord to obtain an early end to a tenancy. The second component requires that a landlord demonstrate that it would be unreasonable or unfair to wait for consideration of a standard One Month Notice to End Tenancy for Cause to be considered.

I accept the landlord's unchallenged testimony and submitted documentary evidence that the tenant has allowed guests to stay in the rental unit who have seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant. Further, given that the tenant and the tenant's guests associations or involvement with individuals has led to gun being fired in the rental property putting other tenants and staff at significant risk of serious injury or death, I find 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 of the *Act*.

Accordingly, I find that the landlord is entitled to an Order of Possession pursuant to section 56 of the *Act*. I issue an Order of Possession effective two (2) days after being served upon the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. The landlord must serve this Order on the tenant as soon as possible. Should the tenant or anyone on the premises 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: October 17, 2019

Residential Tenancy Branch