



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This is an expedited hearing dealing with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for early termination of a tenancy pursuant to section 56.

The landlord attended the hearing and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional fifteen minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on December 5, 2019 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on December 10, 2019.

The landlord provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on December 10, 2019.

Issue(s) to be Decided

Is the landlord entitled to the following:

- An order for early termination of a tenancy and an order of possession pursuant to section 56.

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's 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 testified that the tenancy began on November 1, 2019 and is a fixed term tenancy ending October 31, 2020. The rent is \$590.00, and the tenant provided a security deposit at the beginning of the tenancy in the amount of \$295.00 which the landlord holds. The landlord submitted a copy of the tenancy agreement.

The landlord has applied for an early end of tenancy and an Order of Possession.

The landlord provided testimony and substantial evidence including signed witness statements from OH and OD, occupants in the building, as well as audio files.

The landlord testified that the tenant started drinking excessively shortly after moving in to the unit. While drunk, the tenant repeatedly played loud music, refused to turn the music down despite multiple requests and would respond by increasing the volume and yelling.

The landlord summarized his claim in the Application as follows [as written]:

On the evening of Nov 28, 2019, [tenant] was playing very loud music at night. [OH] asked him to turn the volume down repeatedly, but he would turn down only to turn up again later. Towards later in the evening when asked again, he got very aggressive towards [OH] After a while he turned music even louder, was swearing and shouting, as well as threatening to kill torture and kill [OH] if he had to leave the rental unit. Police was called, and he was arrested.

The landlord submitted a written statement from OH confirming the events of November 28, 2019 support by an audio recording of the threats. The landlord also submitted a written statement from OD, another occupant of the building. OD recounted the tenant's flagrant violation of building rules during his tenancy including noise and loud music.

OD stated in the statement as follows (emphasis added):

- *On the night of November 28, 2019 besides the extraordinary loud music at such late hours we directly heard [tenant] shouting and threatening to cause physical harm to another tenant living in this house. **[tenant] said he was going to kill [OH] if he had to leave the rental unit.***
- *Given his previous criminal record I am truly distressed and concerned about the physical safety and psychological torment inflicted on my family at the moment. He has been violent as well as aggressive, resulting in him being arrested the previous night and [OH] moving in with us upstairs, due to his own fear for his safety.*
- *I would like this tenant to be removed or evicted from this rental house as soon as possible due to my concern to the general safety of me and my family.*

The landlord testified that the occupants of the building are terrified of the tenant. The landlord stated that the tenant may be incarcerated, and he feared the tenant's return. The landlord requested an Order of Possession effective as soon as possible.

Analysis

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

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 establish on a balance of probabilities that he is entitled to an order for an early end of the tenancy.

To end a tenancy early, the landlord must prove that the tenant has done something contrary to section 56 **and** that it would be unreasonable or unfair to the landlord or other occupants to wait for a notice to end tenancy for cause ("One Month Notice").

Section 56 of the Act provides as follows [emphasis added]:

Application for order ending tenancy early

56 (1) *A landlord may make an application for dispute resolution to request an order*

- a. *ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [landlord's notice: cause], and*
- b. *granting the landlord an order of possession in respect of the rental unit.*

(2) *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, in the case of a landlord's application,*

- 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 landlord's property at significant risk;*

(iv) *engaged in illegal activity that*

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.*

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

The landlord relied on section 56(2)(a)(i), that is, that *the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.*

Based on a review of the testimony and evidence, I find that the landlord has met the burden of proof on a balance of probabilities under section 56(2)(a)(i), that is, that the tenant has significantly interfered with or unreasonably disturbed other occupants. I also find the landlord has met the burden of proof on a balance of probabilities that 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. I find the landlord has established entitlement to an order for early termination of tenancy and an Order of Possession effective immediately.

In reaching this conclusion, I have given significant weight to the testimony and written evidence submitted by the landlord. The landlord's testimony was supported by written statements from two witnesses, OH and OD. The landlord and the witness statements Impress me as candid, forthright, and credible evidence establishing that the tenant increasingly engaged in activities that significantly disturbed the occupants OH and OD and caused them to fear for their physical safety. I accept the evidence that the tenant has issued a threat of causing harm and death ("torture and kill") to the occupant OH which was heard by the occupant OD. I accept the landlord's testimony, supported by the occupants written statements, that the occupants have reason to fear for their safety and are terrified of the tenant for valid reasons.

Accordingly, I grant an order ending the tenancy at 1:00 PM on December 27, 2019 and an Order of Possession directing that the tenant and all occupants deliver up peaceful possession of the unit on or before 1:00 PM on December 27, 2019.

Conclusion

I grant an order ending the tenancy effective 1:00 PM on December 27, 2019. I also grant an Order of Possession directing that the tenant and all occupants deliver up peaceful possession of the unit on or before that time. This Order must be served on the tenant. This Order may be filed in the British Columbia Supreme 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: December 27, 2019

Residential Tenancy Branch