



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

On December 30, 2019, the Landlord made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession pursuant to Section 56 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

E.S. attended the hearing as an agent for the Landlord. The Tenant attended the hearing as well, with D.B. attending as his advocate. All in attendance provided a solemn affirmation.

At the outset of the hearing, the Tenant stated that he requested an adjournment as he was currently in the hospital and only received the Notice of Hearing package from another tenant of his rental building who had delivered it to him on January 10, 2019. As a result, he sought an adjournment as he stated that he needed time to gather up evidence, formulate a rebuttal to the Landlord’s claims, and provide a timeline of events.

E.S. was asked her position on the Tenant’s request for an adjournment and she stated that she was opposed to this request as the information he would add and his version of the events would not be factual given his current state of mind, and therefore would not be reliable. As well, the incident in question that was published in the news supports her position. Based on the serious nature of the incidents and the safety of the other tenants in the building, she was not in favour of adjourning this matter.

D.B. confirmed that the Tenant was hospitalized since December 23, 2019 and stated that it would be hard to estimate how much longer he would be there. As such, she could not provide a timeline for how long the Tenant would need to compile his evidence.

The Tenant was asked how he would obtain his evidence if he was still in the hospital for an undetermined length of time and he stated that he would phone and email individuals that would support his position and provide this information to D.B.

When he was asked to explain how the evidence he was seeking to obtain was directly relevant to the Landlord's Application and claims, he advised that he was concerned about "legal issues" and "criminal issues" surrounding the sale of the property from his old landlord to the new one. He advised that he was an accountant, that it was his belief that there was a fraudulent documentation of exchange of funds for this transaction, and that he was a "whistleblower." He then stated that the storage locker in the building had been broken in to, that his bikes were stolen, and that he attempted to contact his old landlord about this issue. He was read the Landlord's details of dispute so that he was reminded of the reasons for the Landlord's Application, he was asked if he understood these details, and he was again asked to explain the relevance of his position in relation to the Landlord's claims.

However, he became evasive, he was not able to answer this question, and he provided incoherent explanations that were not related to the claims on the Application but pertained to his opposition to the property sale transaction and his claims of being a "whistleblower."

Rule 7.9 of the Rules of Procedure provides the applicable criteria for the granting of an adjournment. As the Tenant could not provide compelling testimony that the evidence that he would obtain was directly related in any way to the nature of the Landlord's claims, I find that adjourning the hearing would be prejudicial to the Landlord. As such, I did not grant the Tenant's request for an adjournment.

E.S. advised that the Tenant was served the Notice of Hearing and evidence package by posting this on the door on December 30, 2019. A signed proof of service document was submitted as evidence of service. Based on the undisputed, solemnly affirmed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received the Notice of Hearing package and Landlord's evidence three days after it was posted. The Tenant was asked if he had received and reviewed the Landlord's evidence and he stated that he did not. When he was asked what evidence he did receive, he became evasive again. He was asked to confirm the evidence he received with the Notice of Hearing package and it was determined that he had received the entirety of the Landlord's evidence package. As I am satisfied that the

Tenant received the Landlord's evidence, I have accepted this evidence and considered it when rendering this decision.

The Tenant confirmed that no evidence was submitted for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?
- Is the Landlord entitled to recover the filing fee for this Application from the Tenant?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

E.S. advised that the tenancy started on February 1, 2017 and that her company purchased the property and inherited this tenancy on November 13, 2019. Rent was currently established at \$1,279.00 per month, due on the first of day of each month. A security deposit of \$600.00 was also paid. A signed tenancy agreement was submitted as documentary evidence.

She submitted that the Tenant demonstrated concerning behaviour in December 2019 that rapidly escalated beginning on or around December 20, 2019. She advised that the Tenant had assaulted a construction worker that was doing repairs on the property. An email from an employee of this construction company was submitted as documentary evidence to support this altercation. Subsequent to this, the Tenant then destroyed several pieces of art hanging in the basement hallway and police were called; however, he was not arrested. An Incident Report was submitted as documentary evidence to corroborate these events.

On December 22, 2019, the Tenant was identified as being responsible for placing non-sensical notes under other tenants' doors with the old landlord's name. As well, the Tenant was observed by other tenants of the building to display unusual and disturbing behaviour in the common areas of the property. Such behaviour included hurling racial epithets, screaming, banging on walls, knocking on tenants' doors and screaming incoherent thoughts, forcibly entering another tenant's rental unit, and destroying artwork belonging to the Landlord, in the common areas of the property. Emails from other tenants were submitted as documentary evidence to support these occurrences.

The police were notified, two officers attended the scene, the Tenant resisted arrest and assaulted them, and then he barricaded himself in his rental unit. Police attempted to negotiate with him to exit the unit; however, after lengthy, unsuccessful negotiation, the police were forced to extract the Tenant from his rental unit using tear gas and pepper spray. The Tenant was taken into custody and then admitted to the hospital, in a lockdown ward, where he remains indefinitely. There was significant damage done to the Landlord's property by the Tenant. In addition, damage caused by the police in their attempts to extract the Tenant from his rental unit included large holes in the wall to dispense the tear gas and pepper spray. As well, equipment was required to remove the residual particles of the tear gas and pepper spray that needed to be defused. E.S. provided police reports, media reports, and pictures as documentary evidence to support her position.

E.S. expressed concern for the safety of her staff and of the other tenants of the building should the Tenant return. It is her belief that if he were allowed to return, this would pose a risk of further damage to the Landlord's property or jeopardize the other tenants' safety. She has significant concerns that as he has targeted specific tenants with his behaviour, there would be a likelihood of future problems to occur. She advised that the other tenants are scared that he might return, and she referenced emails that corroborate these sentiments.

The Tenant advised that the bike shed had been broken into in November 2019 and that he lost a significant amount of property. He attempted to advise the old landlord about this issue and did not receive a response. He also did not report these thefts to the police. He stated that he believed that the Landlord drilled holes into his bathroom walls, but he did not elaborate on this point. He began to explain that he was an accountant and he discovered what he believed to be a fraudulent accounting of the sale of the building between the old landlord and the new Landlord. He was upset as he

“does not like crooks or tax cheats.” He advised that the old landlord did not respond to his complaints about this issue.

The Tenant was asked how this related to the reason for the Landlord’s Application for the early end of tenancy, but the Tenant could not explain this. The Tenant was read the Landlord’s details of dispute, was asked if he understood them, and was asked to provide testimony which pertained to why the Landlord made this Application. He stated that he was delivering notes to the other tenants of the building because he was upset about the bike theft and the title search information he found with respect to the sale of the property, and he wanted them to contact the old landlord. He acknowledged that he was angry but he refuted taking the Landlord’s art off the wall and smashing them. Rather, he stated that he took the paintings off the wall and put them on the ground. He later contradicted himself and stated that it was only one painting.

He acknowledged that two police officers attended the scene; however, it was his belief that, as he was not smashing the Landlord’s property, they were actually called because of the notes he was placing under the tenants’ doors. He asked them why they were there and he stated that it was due to the “damning evidence” he acquired regarding the sale of the property. He confirmed that they tried to arrest him and he resisted arrest; however, he did not assault them. He advised that he resisted arrest because he was trying to protect the “valuable information” and “assets” he had on his computer. He confirmed that he went back to his rental unit; however, he refutes that he barricaded himself in. He admitted that he was in negotiations with the police and that his only request was that he wanted the RCMP to attend the scene. He explained that he has information pertaining to “crimes on a federal, provincial, and municipal level.” He confirmed that the police eventually broke in and pepper sprayed him.

The Tenant expressed remorse and apologized for the incidents. He stated that he “was not himself” and all he wanted to do was get in touch with the old landlord. He acknowledged that he will “de-escalate everything” should his tenancy continue. He stated that he holds nothing against any of the tenants in the building, and that in fact, he is “affectionate to the other tenants.” He stated that he has historically been a civil tenant, but he is “dealing with complex issues on a federal, provincial, and municipal level.”

Analysis

Section 56 of the *Act* establishes the grounds for the Landlord to make an Application

requesting an early end to a tenancy and the issuance of an Order of Possession. 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.

The Tenant argued that the only reason the police were called was due to his actions of slipping notes under other tenants' doors; however, I am sceptical of the plausibility of this submission or that police would be dispatched for such an innocuous activity. While he stated that he simply placed either a painting, or multiple paintings, on the ground because he was upset with the old landlord, he could not provide a rationale or any explanation for this behaviour. Given that he acknowledged that he was angry, I find it more likely than not that he expressed his anger by taking paintings off the wall and damaging them in an aggressive manner. As well, I find that this conclusion is more consistent with the evidence provided by the Landlord from other tenants of the building and would more logically explain a call to the police. As such, I prefer the Landlord's evidence on this point.

Furthermore, while the Tenant refutes assaulting the police and barricading himself in his rental unit, the consistent and undisputed evidence is that two police officers attended the scene, that he resisted arrest, that he engaged in negotiations with the police as he refused to leave his rental unit, and that he was forcibly removed from the

rental unit by the police, using pepper spray and tear gas. As such, I am satisfied that the Tenant had been arrested for his conduct on December 22 and 23, 2019.

When weighing the Tenant's testimony against the evidence of the Landlord and the testimony of E.S., I found the Tenant's testimony to be dubious, illogical, inconsistent, and unlikely. Consequently, I placed little weight on the accuracy or legitimacy of his explanations or portrayal of events.

Based on a balance of probabilities, I am satisfied that the Tenant's behaviours were intentional, that they were aggressive and malicious, and that they would fall into the categories of: significantly interfering with or unreasonably disturbing another occupant or the Landlord, seriously jeopardizing the health or safety or a lawful right or interest of the Landlord, putting the Landlord's property at significant risk, engaging 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, and engaging in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the Landlord.

The Landlord must also demonstrate that "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 for cause" to take effect. When weighing the undisputed evidence and testimony of the Tenant's arrest, and the events leading up to this arrest, against the Tenant's somewhat incoherent, meandering, inconsistent and sometimes non-sensical testimony, I am satisfied that I prefer the Landlord's evidence on the whole as a more accurate portrayal of the events as they unfolded.

As a result, I find that the Tenant has been demonstrating irrational, erratic, troublesome behavior, and I accept that there is likely a genuine concern for the ongoing safety of the other residents of the property should he return to the rental unit.

Under these circumstances described, I find that it would be unreasonable and unfair to the Landlord to wait for a One Month Notice to End Tenancy for Cause to take effect. For these reasons, I find that the Landlord has provided sufficient evidence to warrant ending this tenancy early. As such, I find that the Landlord is entitled to an Order of Possession.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of

Section 72 of the *Act*, I allow the Landlord to retain \$100.00 from the security deposit in complete satisfaction of this debt.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** 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: January 15, 2020

Residential Tenancy Branch