



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VICTORIA COOL AID SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on December 31, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession to end a tenancy early for immediate and severe risk.

The Tenant, the Tenant's Representative L.B., and the Landlord's Agent K.V. attended the hearing at the appointed date and time and provided affirmed testimony.

K.V. testified that she served the Application and documentary evidence package to the Tenant in person on December 31, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenant stated that she was unable to view some digital evidence that was provided to her by the Landlord.

Preliminary Matters

According to the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") 3.10.5 Confirmation of access to digital evidence

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.

In this case, the Tenant stated that she was unable to view several video recordings which were provided by the Landlord to the Tenant. As I have insufficient evidence from the Landlord indicating that they made efforts to ensure the Tenant was able to view the digital evidence prior to the hearing, I find that the digital evidence provided by the Landlord will not be considered in this hearing.

Rules of Procedure 3.15 states that evidence that is intended to be relied on by the Respondent at the hearing are served on the Applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the Respondent's evidence must be received by the Applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

The Tenant stated that she did not provided a copy of her documentary evidence to the Landlord in preparation for the hearing. As such I find that the documentary evidence that the Tenant provided to the Tenancy Branch on January 13, 2020 will not be considered during this hearing.

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.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for early termination, pursuant to Section 56 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the Tenancy had started in 2011, however, due to a fire in building, the Tenant was relocated to a different rental unit, before commencing a new tenancy with the Landlord on May 21, 2019. Currently, the Tenant is required to pay rent in the amount of \$375.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$375.00.

K.V. stated that the Landlord is seeking to end the tenancy early based on the fact that the Tenant has significantly interfered with or unreasonably disturbed another occupant of the residential property. K.V. stated that on December 29, 2019 the Tenant assaulted another occupant on the rental property after the occupant was requesting that the Tenant reduce the noise level emitting from her rental unit. K.V. stated that the Tenant proceeded to come out of her rental unit with a baseball bat, taking an aggressive posture before striking the occupant twice with the baseball bat.

K.V. stated that she has not served the Tenant with a One Month Notice to End Tenancy, however, she feels as though the assault constitutes a situation which is deemed immediate and severe. K.V. stated that she fears for the safety of the other occupants as well as the staff members on the rental property. As such, the Landlord is seeking an order of possession.

In response, the Tenant stated that she was not making any noise in her rental unit prior to her exiting her rental unit to confront another occupant who was playing music and calling the Tenant's name in the hallway. The Tenant acknowledged that she struck the occupant with the baseball bat, however, she states that she has since apologized and that this is out of her character to use violence. The Tenant stated that she does not feel as though the tenancy should end based on this isolated incident.

Analysis

Based on the affirmed documentary evidence and 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 had 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.

The causes for ending the tenancy early, as listed above, are identical to the causes for which a Landlord can end a tenancy by serving a One Month Notice to End Tenancy for Cause. The difference between this process and a determination on whether the Landlord has the grounds to end the tenancy for cause is that when a Landlord seeks to end the tenancy earlier than would occur had a One Month Notice to End Tenancy for Cause been served, the Landlord must also prove that it would be unreasonable or unfair to the Landlord or other occupants to wait for the One Month Notice to End Tenancy for Cause to take effect. In other words, the situation created by the Tenant must be extreme and require immediate action.

In this case, the Landlord has applied for an order of possession to end the tenancy early based on immediate and severe risk. During the hearing, the parties testified and agreed that the Tenant assaulted another occupant on the residential property on December 29, 2019, by striking her twice with a baseball bat.

In this case, I find no difficulty in concluding that the Tenant has significantly interfered with or unreasonably disturbed another occupant on the residential property. Further, I find it would be unreasonable or unfair to the Landlord to wait for a notice to end the

tenancy under section 47 of the *Act* out of fear for the safety of the other occupants and staff in the rental property.

I find the Landlord has demonstrated an entitlement to an order of possession, which will be effective two (2) days after service on the Tenant.

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in 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 14, 2020

Residential Tenancy Branch