



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nanaimo Affordable Housing
Society and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an early termination of the tenancy and an Order of Possession pursuant to section 56 of the Act. The Landlord also applied to recover the \$100.00 cost of their Application filing fee.

The Tenant and an agent for the Landlord, J.E.S. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing. However, the Tenant did not submit any documentary evidence to the RTB or the Landlord for consideration.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession based on the early termination of the tenancy in accordance with section 56 of the Act?
- Is the Landlord entitled to recovery of their \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on September 1, 2019, with a monthly rent of \$350.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$175.00, and no pet damage deposit.

In addition to applying for an early termination of the tenancy and an Order of Possession, the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause, signed and dated January 21, 2020 ("One Month Notice"). The One Month Notice had the rental unit address, it was served by being posted on the Tenant's rental unit door on January 21, 2020, and it had an effective vacancy date of February 29, 2020. The grounds for the One Month Notice were set out as follows: The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord, and seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

In the hearing, the Landlord said that he seeks an early termination of the tenancy and an Order of Possession, because of incidents in which the Tenant assaulted and or threatened other tenants in the residential property.

On the Application the Agent wrote:

One Month Notice to End Tenancy for Cause delivered January 20, 2020. It is now February 7, 2020; opportunity to dispute the notice has passed and there has been no response from [the Tenant] or an advocate. The tenant remains in possession of the unit; he is due to be released from psychiatric care and is being allowed to return to his unit. He has physically assaulted and threatened other tenants; his return poses a significant safety risk. We seek an expedited order of possession to ensure the safety of the tenants in an effort to see that their *Residential Tenancy Act* section 28 rights are upheld.

December 14, 2019 – incident documenting [the Tenant] assaulting and threatening other tenants within the building.

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January 21, 2020 – incident documenting [the Tenant] assaulting and threatening other tenants within the building.

In the hearing, the Agent said:

Our main concern is the safety of the tenants in building and our staff. These are our absolute main concerns. Through the actions noted in this package, it has been shown that this tenant, [C.K.], isn't in the best housing for him. There have been a few incidents. . . to bring him back into the building will affect the community and the workers. It's a supported housing building. There is a ripple effect of having someone like that in the building; it can have serious implications for other tenants and their treatment and support. The goal is to have the unit cleared to find an appropriate tenant for the Unit. Hopefully, [C.K.] can find a better supported housing for him, better equipped housing for him.

The Tenant said:

The funny thing is, I didn't see anything in those packages. Fifty percent of it wasn't real. The whole stories, everybody in the building got affected and was afraid. I thought half of it was lies. On a different note, I didn't hear anybody describe what I went through there. Half my cheque for the rent, landlords being rude and edgy, telling people off and being rude. No one said anything about that I was sick the entire time. I had a life-threatening virus. I didn't see anyone say that [C.K.] was sick.

Everybody in the building feeling like I could attack them? I was only mad at one person. When I was very, very, very sick and frustrated, he told me in a crass way to chill out. Don't be mocking me. . . I was getting people laughing at me. To tell you the truth, I don't know who brought up this eviction notice. Some said I was in the top three people living there.

Someone called the police – apparently 40 people called the police for all I know. Three, four, five people called the police. 'This guy's going to hurt somebody. He probably hurt someone', which in my opinion is not true.

In the hearing, the Tenant agreed that he has had encounters with other tenants in the building who have "mocked" and "made fun of" him. The Tenant said there was a man

from downstairs who would yell and scream, and that he should be the one evicted, not the Tenant. The Tenant did not deny having been angry with other tenants and/or occupants of the residential property, although, he said this was because he was suffering from a “life-threatening virus”. The Tenant did not provide any supportive evidence in this regard.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

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 Landlord.

Section 56 of the Act establishes grounds on which a landlord may apply for dispute resolution to request an early termination of a tenancy and order of possession. In order to grant such an order, I need to be satisfied that the Tenant has done any of the following:

1. significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. put the landlord's property at significant risk;
4. has 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;
5. has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
6. 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 tenancy under section 47 to take effect.

In this case, I find that the Landlord has established on a balance of probabilities that it is more likely than not that the Tenant has done the first two actions in the above noted list, and that the last paragraph applies - I find that it would be unreasonable and unfair

for the Landlord or other occupants to wait for a one month notice to end tenancy to take effect. I, therefore, find that the Landlord has met the burden of proof in this matter and that the Landlord is entitled to receive an Order of Possession for this rental unit.

However, as the effective vacancy date of the One Month Notice has passed, I find that it gives cause to end the tenancy, as well. Section 47(5) of the Act states that if a tenant who has received a One Month Notice does not apply for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. According to section 90 of the Act, the Tenant was deemed served with the One Month Notice three days after it was posted on the door or by January 24, 2020.

As there is no evidence before me that the Tenant disputed the One Month Notice, I find that he is conclusively presumed under section 47(5) of the Act to have accepted the One Month Notice, and I find that the tenancy, therefore, ended on February 29, 2020. As a result, I find that the Tenant is overholding the rental unit and the Landlord is, therefore, entitled to an Order of Possession pursuant to section 55(2)(b) of the Act.

Accordingly, and pursuant to sections 47(5) and 56(1) of the Act, I grant the Landlord an Order of Possession, which must be served on the Tenant and is effective two days after the date of service. Further, given their success in this Application, I grant the Landlord recovery of the \$100.00 Application filing fee. I authorize the Landlord to retain \$100.00 from the Tenant's security deposit in satisfaction of this award.

Conclusion

The Landlord is successful in the Application for an Order of Possession, pursuant to sections 47(5), 55, and 56(1) of the Act. I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 72 of the Act, I award the Landlord with recovery of the \$100.00 Application filing fee. The Landlord is authorized to retain \$100.00 from the Tenant's security deposit in satisfaction of this award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: March 10, 2020

Residential Tenancy Branch