



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for an order to end the tenancy early and receive an order of possession, and to recover the cost of the filing fee.

The landlord and the tenant CB (tenant) and his spouse LB (spouse) attended the teleconference hearing and gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. The hearing process was explained and an opportunity to ask questions was provided to the agent. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant confirmed that they received the Notice of Dispute Resolution Proceeding dated February 3, 2020 (Notice of Hearing); however, claims it was not served properly. I find the tenant failed to articulate how the Notice of Hearing was not served properly as the tenant simply stated that it was amongst all of their other paperwork for court. Given the above, the hearing continued as I find the tenant failed to provide sufficient details on why the Notice of Hearing was not served properly as the tenant called into the hearing as scheduled and as the instructions indicate on the Notice of Hearing.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Issues to be Decided

- Is the landlord entitled to end the tenancy early and obtain an order of possession?
- Is the landlord entitled to the recovery of the cost of the filing fee?

Background and Evidence

The landlord testified that the tenancy began on April 5, 2019 and that monthly rent was \$900.00 per month plus utilities. The tenant claims that the landlord is not their landlord and that WW is their landlord. The landlord testified that WW is their agent who accepts the monthly rent and that the tenants are aware that DJM is the owner of the residence and is their landlord. The tenants did not dispute the start date of the tenancy or the monthly rent amount and due date. The parties confirmed that March 2020 rent has not been paid as of the date of the hearing as it is not due until March 5, 2020.

The landlord stated that they are seeking to end the tenancy early based on the tenant assaulting the landlord on November 12, 2019. In support of their testimony, the landlord submitted an Undertaking Given to a Peace Officer, which indicates that the tenant was charged with Assault under section 266 of the *Criminal Code* (assault) on November 12, 2019 and has a condition not to contact the landlord as a result. The landlord also stated that is why his agent WW collects the monthly rent.

The landlord stated that on November 12, 2019, the landlord attended the rental unit to give the tenant a notice to clean up the yard and for late payment of rent. The landlord stated that the tenant was verbally combative and eventually took off their jacket and put up their fists to instigate a fight. The landlord stated that they would not participate in a fight and placed the papers in the rental unit on the floor at which time the tenant grabbed the landlord, spun the landlord around and threw the landlord off the porch, which was a couple feet off the ground. The landlord stated that they suffered lower back pain and that since the assault, the landlord has been feeling worse and submitted a doctor's note in evidence, which supports the landlord's medical complaints. The landlord also denied that they have ever been charged with assault against the tenant.

The tenant responded to the assault by denying the landlord's version and stated that they did not grab, spin or throw the landlord and that the landlord was the aggressor. The tenant was unable to explain why the landlord was not charged with assault. The tenant stated that they suffer from a head injury and has memory problems. The tenant confirmed that they are awaiting a court date for the assault charge to be heard in court.

Analysis

Based on the testimony provided during the hearing, and on a balance of probabilities, I find and I am satisfied that the tenant CB has seriously jeopardized the health or safety or a lawful right or interest of the landlord and has committed an illegal act, assault, that has jeopardized the landlord's lawful right of attended the rental property to deliver a notice to the tenant.

Section 56 of the Act applies and states:

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**

(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.

(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.

[Emphasis added]

I am also satisfied that it would be unreasonable and unfair to the landlord to wait for a notice to end tenancy under section 47 of the Act. I find the actions of the tenant and the documentary evidence before me to support that the tenant assaulted the landlord, and I find the tenant's response to be insufficient and contradictory and without any supporting documentary evidence. I find that assault by a tenant against a landlord in a tenancy is unreasonable. Therefore, pursuant to section 56 of the Act, I grant the landlord an order of possession for the rental unit effective not later than **two (2) days** after on the tenant. I find the tenancy ended the date of this hearing, March 2, 2020 pursuant to section 62(3) of the Act.

As the landlord's application is successful, I grant the landlord **\$100.00** for the recovery of the cost the filing fee under section 72 of the Act. As there was no security deposit or pet damage deposit paid, I grant the landlord a monetary order of \$100.00 pursuant to section 67 of the Act.

Conclusion

The landlord's application is successful.

The tenancy ended this date, March 2, 2020.

The landlord is granted an order of possession effective two (2) days after service on the tenant.

This decision will be emailed to both parties. The order of possession will be emailed to the landlord for service on the tenant. This order may be enforced through the Supreme Court of British Columbia.

The landlord has been granted a monetary order of \$100.00 pursuant to sections 67 and 72 of the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 2, 2020

Residential Tenancy Branch