



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOOKOUT HOUSING & HEALTH
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order of possession of the rental unit for the Tenant.

The Tenant and two agents for the Landlord, R.T. and D.G. ("Agents"), 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 Landlord 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; 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.

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 Tenant entitled to an Order of Possession?

Background and Evidence

The Parties agreed that the tenancy began on July 1, 2018, with a monthly rent of \$375.00, due on the first day of each month. The Parties agreed that the Tenant did not pay the Landlord a security deposit or pet damage deposit.

The Tenant submitted copies of two letters he received from the Landlord dated January 22, 2020, which purported to end the Tenant's tenancy ("Eviction Letters"). In the first Eviction Letter, the Landlord said:

Dear [Tenant],

This letter is to inform you that **effective immediately**, you are evicted from [residential property building]. On 20.01.15 an incident took place in your suite; where upon review of the camera footage, you were found to be in possession of a fire arm. When you moved into [residential property building] on 18.06.20, you signed a Crime Free Housing Addendum. This Addendum states:

The tenant(s), any member of the tenant(s)' household, and any person invited onto the residential property or residential premise by the tenant(s) or any member of the tenants' family shall not engage in any criminal activity on the premises or property including, but not limited to:

5. Violence or threatened violence

6. Unlawful use of a firearm

7. Any criminal activity that threatens the health, safety or welfare of the landlord, other tenants or persons on the residential property or residential premises.

VIOLATION OF THE ABOVE PROVISIONS, WHICH IS A REASONABLE AND MATERIAL TERM OF THE TENANCY AGREEMENT, SHALL BE GOOD CAUSE FOR A NOTICE TO END A TENANCY.

...

At this time [Landlord] staff will **attempt** to secure you a shelter bed at another location.

[emphasis in original]

The Tenant also submitted a copy of a subsequent Eviction Letter he received from the Landlord dated January 22, 2020. It reads as follows:

20.01.22

[Tenant's name
and address]

Dear [Tenant]

This letter is to inform you that **effective immediately**, you are evicted from [residential property building]. On 20.01.15 after a stabbing incident in your unit and upon review of the video footage, you were seen to be in possession of a fire arm. At this time, you have been removed by the police and the building remains under lockdown (Police report # [number provided] – stabbing, possession of handgun).

This Eviction Letter goes on to reiterate the details of the Crime Free Housing Addendum that was contained in the Tenant's tenancy agreement and noted above. This Eviction Letter also states: "When coming to pick up your effects, please ensure you are accompanied by a police escort."

In the hearing, the Tenant that two or three days prior to the eviction, he was stabbed. He said: "Two men came into the [building] and got into my room, and I was stabbed and bear-maced. When I came out of my room, I had a pellet gun in my hand." The Tenant said that it was not a real gun, but "this whole thing was under the grounds that I had a real gun and I didn't. Anybody can buy a pellet gun at [national hardware store]."

The Landlord pointed to the Crime Free Housing agreement that the Tenant signed regarding violence and the threat of violence in point five above. The Landlord said that the Tenant was offered alternate housing, but refused this offer.

The Tenant said: "I was the victim of violence. Someone found out I cashed a \$2,400.00 cheque; that's why they came to rob me. It was a BB gun, not a toy. The police left it there and I was not charged with having a firearm. As for housing, I was offered a bed at a shelter."

I asked the Tenant why he had a BB gun and he said that there are a lot of rats around the building. He said: "Staff has seen me out back shooting the rats ... it's not even a

pellet gun it's a BB gun, an air saw." He said if someone was accidentally shot with it, "the worst that would happen is that they would get a little bruise. Any kid can go down to [national hardware store] and buy one. There's no age limitation."

The Landlord said that under information and privacy legislation, the police are not able to release information.

It is our understanding that the gun was taken [by the police]. We have had three incidents. We have had one person seriously injured and holding a pellet gun. Someone walking out of a unit after being assaulted, that is threatening. The police said to consider any type of gun is a real gun. It's not up to us to figure out if it is real or fake. We have to consider other tenants health or safety. It's not our job to figure out if the gun was safe. If staff would have been aware of his doing target practice in the back, we would have evicted him for that. The [housing authority] won't take people back if you've been using a gun.

These three people were guests in your room; they had to be signed in to get into the building. Guests can get into the building – they are responsible for people they bring into their unit.

The Tenant said:

When they came in, that was the first thing they reached for. There were 21 staples. If I wouldn't have caught that BB gun – strictly a defense action. I didn't have time to think. They thought it was real and bolted out of there. I had just been bear-sprayed; how would I have done target practice with the bear spray? I had one guest in my unit at the time, a girlfriend. The other two were let in by somebody else. How could they be registered to me as guest?

As to leaving with a cocked gun, it's considered a toy, not a gun. Right after I walked out of my unit. I put it in my pocket. I wasn't waving it around. After immediately walking out of my unit I put it in my pocket. If you watch the videos you can see it.

The Landlord said: All I want to say is that in #6 of the Crime Free Housing Addendum, a firearm is a gun designed to be used to scare to intimidate." The Tenant said: "I want a place for me and my dog to go back to. He doesn't understand why he can't go back home. It's added nothing but stress over some childish thing. I don't get it."

Analysis

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

Given the testimony of the Parties, including the Eviction Letters given to the Tenant, I find that the Landlord has established sufficient cause, pursuant to section 47 of the Act, to end the tenancy. I agree with the Agent that the weapon that the Tenant admitted to having stored in his rental unit and having carried it out of the rental unit was threatening, regardless of the actual injury it could inflict on others. The Tenant acknowledged that the intruders fled when he seized the gun in front of them; I find that this indicates how threatening this item was to people – even people who might otherwise have been able to identify different types of guns. As the Tenant said.

The Tenant signed the Crime Free Housing Addendum; therefore, I find he was bound by the consequences set out in that agreement.

The Tenant did not apply to cancel the Landlord's eviction notices; however, I find that the Eviction Letters given to the Tenant by the Landlord were materially compliant with section 52 of the Act, as to content.

One aspect of the approved form that was not contained in the Eviction Letters was directions for tenants on how to dispute the evictions through the RTB. However, as the Tenant applied for dispute resolution in response to receiving the Eviction Letters, I find that he was not prejudiced in any way by not having had these directions attached to the Eviction Letters. The Tenant acknowledges that he was in possession of a firearm, which was the ground set out in the Eviction Letters. I find this equates to the Tenant having "seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant", pursuant to section 47(1)(d)(ii) of the Act. As a result, the Tenant's Application for an Order of Possession is dismissed, pursuant to sections 47 and 62 of the Act.

On March 25, 2020, the Provincial Government issued a media release indicating that there would be a moratorium on evictions in British Columbia, as a result of the Covid-19 pandemic. As of the time of this hearing no changes had been made to the *Residential Tenancy Act* and Residential Tenancy Regulation. As an Arbitrator with delegated authority under the *Residential Tenancy Act*, I am obligated to make my decisions according to the *Act(s)* and Regulation, as they read on the date of the hearing.

Conclusion

The Tenant is unsuccessful in his Application for an Order of Possession of the rental unit. I found that the Landlord's eviction of the Tenant was valid, given that the Tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, pursuant to section 47 of the Act.

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 26, 2020

Residential Tenancy Branch