Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Landlords under the *Residential Tenancy Act* (the "*Act*"), seeking:

- An early end to the tenancy pursuant to section 56 of the *Act*; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord J.Y. (the "Landlord"), a witness for the Landlord (the "Witness"), and the Tenant, all of whom provided affirmed testimony.

The Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") state that the respondent must be served with a copy of the Application and Notice of Hearing. Although the Tenant raised concerns about the date and manner in which they were served with the Notice of Dispute Resolution Proceeding Package by the Landlord, including a copy of the Application and notice of the hearing, ultimately the Tenant acknowledged receipt, appeared at the hearing in their defense, and had sufficient time to submit documentary evidence for my consideration. As a result, I find that the Tenant was sufficiently served with a copy of the Application and notice of the hearing pursuant to section 71 (2) (c), regardless of the date received or the manner in which it was served.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the hearing and the Application.

Preliminary Matters

Service of Evidence

The Landlord stated that they served 12 documents (1 text file, 3 photographs, copies of two emails, and screen shots of 6 text message chains) on the Tenant by email on April 24, 2020, in response to the evidence received from the Tenant, as they believed that they had until 2 days before the hearing to serve all their evidence on the Tenant. The Tenant requested that this evidence be excluded as it was received by them outside of the time periods required by the Rules of Procedure and they had insufficient time to review and respond to this evidence.

This matter was scheduled as an expedited hearing pursuant to section 10 of the Rules of Procedure. Rule 10.2 of the Rules of Procedure states that an applicant must submit all evidence that they intend to rely on at the hearing with the Application for Dispute Resolution. As the Landlords filed their Application on April 13, 2020, all the evidence they intended to rely on at the hearing needed to be submitted on April 13, 2020. Rule 10.6 states that if a piece of evidence is not available when the applicant or respondent submits and serves their evidence, the arbitrator will apply rule 3.17, which states that the arbitrator may accept new and relevant evidence that was not available at the time that their application was made or when they served and submitted their evidence, provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Having reviewed the late documentary evidence by the Landlords, I find that the majority of this evidence either existed at the time of the Application or could reasonably have been obtained at that time through the exercise of due diligence on the part of the Landlords. Although the Landlord argued that they did not expect the Tenant to dispute certain claims or facts, and therefore needed to submit additional documentary evidence to refute the Tenant's claims, I do not accept this argument. It was incumbent upon the Landlords to submit all evidence they intended to rely on at the hearing at the time of filing their Application, including the best available evidence to support their claims. As the late documentary evidence is directly related to the reasons for which the Application was filed, I find that it was the Landlords' obligation to obtain and submit this evidence at the time they filed their expedited application if they wished to rely on it at the hearing. It was not open to the Landlords, given the nature and purpose of expedited hearings, to submit only some evidence to support their Application and then wait until the Tenant's evidence was received before submitting additional evidence for consideration.

Based on the above, I find that it would be both a breach of the Rules of Procedure and the principles of natural justice to accept the majority of the late evidence for consideration as the Tenant did not have sufficient time to review and respond to it and it could reasonably have been obtained and submitted by the Landlords on April 13, 2020, along with their Application. As a result, I have excluded this evidence, except as outlined below, from consideration in this matter.

As part of their late evidence the Landlords submitted a document confirming the authenticity of a statement submitted with the Application on April 13, 2020. Although the Tenant argued that this evidence should be excluded, the Landlord stated that it was only submitted to confirm the authenticity of the original document, which the Tenant questioned. Section 75 of the *Act* states that the rules of evidence do not apply and that arbitrators may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that they consider to be necessary and appropriate, and relevant to the dispute resolution proceeding.

As the authenticity of one of the documents submitted by the Landlords with their Application has been questioned by the Tenant, I find evidence related to the authenticity of the document in question necessary, appropriate, and relevant to the proceedings and I therefore accept this document for consideration.

The Landlords also submitted two photographs of a previous decision from the Residential Tenancy Branch (the "Branch") in relation to this tenancy as part of their late evidence. As both parties acknowledge previous receipt of this decision and as it forms part of the Branch records in relation to this tenancy, I have also accepted these two photographs for consideration in this matter.

The Landlord acknowledged receipt of the Tenant's documentary evidence by registered mail on April 23, 2020, more than 2 days prior to the date of the expedited hearing in accordance with rule 10.5 of the Rules of Procedure. As a result, I have accepted it for consideration in this matter.

Issue(s) to be Decided

Are the Landlords entitled to end the tenancy early pursuant to section 56 of the *Act*?

Are the Landlords entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The parties agreed that the Tenant rents a room in a house shared by other tenants-in-common.

The Landlord stated that there have been ongoing issues of violence and threats from the Tenant and that numerous tenants-in-common, both past and present, have feared for their safety due to the Tenant's behavior. The Landlord pointed to an email authored by a previous tenant-in-common Y.G. In the statement Y.G. characterizes the Tenant as an extreme person and states that after the Tenant moved-in, people began vacating the rental unit as a result of their interactions with the Tenant and the toxic environment the Tenant created. Y.G. stated that their girlfriend became uncomfortable with the Tenant and that shortly before they moved out, the Tenant threatened their life, their girlfriend's life, and the life of another tenant-in-common. Y.G. also stated that in June of 2019, approximately a week after they moved out, the Tenant laid their hands on one of the tenants-in-common.

The Tenant questioned the authenticity of the email allegedly authored by Y.G. stating that they do not believe it was authored by them. In response, the Landlord pointed to a copy of the email sent by Y.G. containing the statement outlined above.

In the hearing the Landlord called a witness, K.S., who is currently a tenant-in-common at the rental property with the Tenant. The Witness stated that they have lived in the rental unit for 10 months and during that time the Tenant has attacked them, as well as another tenant as described by Y.G. at the end of their statement. The Witness stated that they witnessed the attack in July of 2019, and that the Tenant was arrested as a result, but no charges were laid. The Witness stated that the tenant-in-common who was attacked has since moved out as a result of their interactions with the Tenant. The Witness stated that all of the tenants-in-common have made numerous complaints about the Tenant regarding foul language and loud music and that they themselves have been physically attacked twice by the Tenant.

The Witness stated that the Tenant physically pushed them on March 9, 2020, resulting in police attendance, and that on April 13, 2020, the Tenant threw numerous objects at their door and attempted to break down their door regarding a mail dispute, resulting again in police attendance. The Witness stated that the Tenant has been warned by the police that he would be arrested for breaking the peace if their behaviour continues. The

Witness also stated that they have filed their own application with the Branch against the Landlords in relation to loss of quiet enjoyment as a result of the Tenant.

The Tenant denied the allegations against them stating that the Witness was not present during the interaction with the previous tenant-in-common in July of 2019 and that no charges were laid regarding that incident as it was the other party who assaulted them. The Tenant alleged that the Witness is being untruthful as they were not even present and did not witness the incident in July of 2019. The Tenant also stated that although the Landlord and Witness have alleged that all the other occupants have issues with him, this is not true. The Tenant stated that they are on good terms with all of the other tenants-in-common and that the reason the Landlords have not submitted any evidence of complaints from the other tenants-in-common or called them as witnesses is because their allegations are untrue.

The Landlord denied that the Tenant is on good terms with the other tenants-in-common and stated that they have not submitted statements or been called as witnesses as they are afraid of retaliation by the Tenant. The Landlord pointed to four police file numbers for incidents on July 13, 2019, March 9, 2020, April 10, 2020, and April 13, 2020, and stated that they are seeking to end the tenancy pursuant to section 56 of the *Act* due to safety concerns from the other tenants-in-common and concerns regarding damage to the rental unit.

The Tenant denied throwing items at the Witness's door or causing any other damage to the rental unit. The Tenant also stated that the majority of reasons relied on by the Landlords to end the tenancy pursuant to section 56 of the *Act* are old, such as the incidents referred to by Y.G. and the July 2019 incident referred to by both Y.G. and the Witness or have been grossly misrepresented or exaggerated by the Witness and the Landlord.

The Tenant stated that the Landlord is not sharing house rules with new tenants, which is causing tension, but denied that they are violent or threatening. The Tenant also stated that the Landlord is trying to provoke conflict between them and the other tenants-in-common. The Tenant also stated that the Landlords lack evidence to substantiate their claims and the claims of the Witness and that the Landlords therefore have not submitted sufficient evidence that they are entitled to end the tenancy.

Both parties submitted documentary evidence in support of their positions including but not limited to photographs, written accounts, audio and video recordings, copies of emails and text messages, copies of a previous Branch decision relating to a One

Month Notice to end Tenancy for Cause, a copy of the tenancy agreement, and police file numbers.

Analysis

Rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. As a result, I find that is was incumbent upon the Landlords to satisfy me that they have cause to end the tenancy pursuant to section 56 of the *Act*.

Although the Landlord, the Witness and Y.G. relied on several incidents from July 2019 and earlier as justification for ending the tenancy pursuant to section 56 of the *Act,* these incidents occurred 9 or more months prior to the Landlords' Application. One of the requirements for ending a tenancy pursuant to section 56 of the *Act* is that it would be unreasonable, or unfair to the Landlords 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. As these incidents occurred 9 or more months prior to the Landlords' Application, I find that the Landlords had ample time to serve a One Month Notice to End Tenancy for Cause in relation to these incidents. Further to this, I see no reason why these incidents should be considered as justification to end the tenancy now, pursuant to section 56 of the *Act*, when either the tenants-in-common did not feel them severe enough to bring forward to the Landlords at that time or the Landlords did not see fit to end the tenancy pursuant to either section 47 or 56 of the *Act* at that time. As a result, I do not find that these incidents constitute grounds under section 56 of the *Act* for ending the tenancy.

Having made this finding, I will now turn my mind to the more recent incidents relied on by the Landlords and referred to by the Witness. The Landlord and Witness referred to three incidents between March 9, 2020 – April 13, 2020, in which they state that the Tenant either physically or verbally assaulted the Witness or disturbed the peace by playing loud music. Although the Landlords supplied police file numbers for incidents on March 9, 2020, April 10, 2020, and April 13, 2020, the police reports were not submitted for my consideration. As a result, I find that the police file numbers demonstrate only that the police were called, not the reason for the calls.

Although the Tenant denied that they are verbally or physically aggressive during the hearing, the Landlords submitted an audio recording of an incident which occurred on

March 9, 2020, wherein the Tenant can be heard shouting and swearing, using an aggressive tone, and the Witness can be heard stating that the Tenant has pushed them. In the audio recording physical contact can also be heard between the Tenant and the Witness. In their own submissions the Tenant acknowledged pushing the Witness on March 9, 2020, however, they argued this was in self-defence as the Witness has crossed the threshold to their room. Based on this audio recording, the existence of a police file number for this date, the Witness' testimony in the hearing, and the Tenant's admission of having pushed the Witness, I am satisfied that the Tenant was verbally aggressive towards the Witness and made unwanted and aggressive physical contact with them on March 9, 2020.

Although the Tenant argued self-defence, I do not accept this argument. There is no evidence before me from either party that the Witness used force against the Tenant or that the Witness threatened to use force against the Tenant. As a result, I am satisfied that the physical force used against the Witness on March 9, 2020, was not self-defence, and that the Tenant has therefore significantly interfered with or unreasonably disturbed another occupant of the residential property and seriously jeopardized the health or safety of another occupant.

Based on the above, I am also satisfied that it would unreasonable and unfair, due to safety concerns for the Witness and 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. I therefore grant the Landlords' Application seeking an early end to the tenancy pursuant to section 56 of the *Act*. The Landlords are therefore entitled to an Order of Possession effective **two days after service on the Tenant.**

Pursuant to section 72 of the *Act*, I also grant the Landlords recovery of the $100.00 filing fee. The Landlords are entitled to withhold this amount from any security or pet damage deposit paid by the Tenant, or to serve and enforce the attached Monetary Order (but not both).

Conclusion

Pursuant to section 56 of the *Act*, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. The Landlords are 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 sections 67 and 72 of the *Act*, I grant the Landlords a Monetary Order in the amount of $100.00. The Landlords are 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 Small Claims Division of the Provincial Court and enforced as an Order of that Court. In lieu of serving and enforcing this Monetary Order, the Landlords are authorised to withhold this amount from any security or pet damage deposit paid by the Tenant.

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: May 6, 2020

Residential Tenancy Branch