



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M'akola Housing Society and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents. The tenant was represented by an advocate.

As both parties were present service was confirmed. The parties each confirmed receipt of the respective materials. Based on the testimonies I find that each party was duly served with the materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an early end of the tenancy and Order of Possession?
Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The parties agree on the following facts. This periodic tenancy began in 2013. The rental unit is a suite in a multi-unit building with 10 individual units. The current monthly rent is \$418.00. A security deposit of \$320.00 was collected at the start of the tenancy and is still held by the landlord.

The parties agree that on April 27, 2020 there was an incident in the rental unit where a firearm was discharged. The police attended on the scene and found an individual who was suffering serious injuries and the tenant. The tenant was subsequently released by the police and there is an ongoing investigation of the incident.

The landlord submits that due to the April 27 incident some of their staff and contractors are fearful for their physical safety and there has been subsequent interactions between some of the cleaning staff and the tenant which have been confrontational and hostile in nature.

The tenant submits that as the incident of April 27, 2020 is still under investigation that the landlord has not established on a balance of probabilities that there is a basis for this tenancy to end. The tenant says that they maintain their parental rights to their children and there has been no conclusion that they pose an ongoing danger to their family or other occupants of the building. The tenant submitted into evidence a written statement from a witness regarding their subsequent interactions with the cleaning staff who disputes the landlord's submission that the tenant acted in an aggressive or confrontational manner.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.
- put the landlord's property at significant risk;

- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- 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;
- engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- 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 the tenancy under section 47 [landlord's notice: cause] to take effect.

I find that the landlord has provided sufficient evidence to show that there is a basis for this tenancy to end. I find that a firearm being discharged inside the rental unit is an inherently dangerous act that seriously jeopardizes the safety of the other occupants of the building and the landlord. The tenant confirms that a firearm was brought into the rental unit and it subsequently went off injuring an individual inside the suite. I do not find the fact that criminal culpability has not yet been determined to have any effect on the determination of whether there is a basis for this tenancy to end. The standard of proof for criminal investigation and a determination pursuant to the Act are different and the mere fact that the tenant has not been charged with a crime does not mean that there is no basis for this tenancy to end.

The tenant also submits that the sequence of events that led to the discharge of a firearm inside the rental unit has not been established. I find, again, that this is of little concern in determining that there is a reason for this tenancy to end. It is not disputed that the tenant had a firearm in their rental unit, it is not disputed that the firearm discharged. Whether the firearm discharged due to the actions of the tenant or through their negligent failure to prevent it from firing is immaterial. I find that having a firearm in a residence that can and did go off demonstrates a serious inherent risk to the other occupants of the building.

I do not find the submissions of the parties regarding the subsequent interaction between the tenant and cleaning staff to be particularly helpful. Based on the witness statements of both parties there was an interaction between the tenant and some of the cleaning staff on May 2, 2020. While the parties disagree on the tenant's conduct I find the mere fact that there was an altercation to be sufficient to demonstrate the disturbance and discomfort caused by the tenant to others on the property.

I find that the landlord has established on a balance of probabilities that the tenant has engaged in behaviour that has seriously jeopardized the health and safety of others by allowing a firearm to be brought onto the rental property. I accept the evidence of the parties that there have been subsequent interactions between the tenant and others that demonstrates that the discharge of a firearm was an egregious example of a pattern of behaviour. I find that it would be unreasonable to the landlord and the other occupants of the rental building to allow the tenancy to continue and expose the other occupants to the risk caused by the tenant.

Pursuant to section 4(1) of the *Ministerial Order M089* issued March 30, 2020 pursuant to the State of Emergency declared on March 18, 2020, I find that it would be unreasonable for the landlord to wait for this state of emergency to end prior to receiving an Order of Possession to protect the health and safety of the residents of the rental property. Therefore, in accordance with section 4(1) of the Ministerial order and pursuant to section 56 of the *Act*, I find that the landlord is entitled to an Order of Possession.

Accordingly, I issue an Order of Possession to the landlord pursuant to section 56 of the *Act*.

As the landlord's application was successful the landlord is entitled to recover the filing fee for this application. In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenant's \$320.00 security deposit in satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The security deposit for this tenancy is reduced to \$220.00.

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: June 1, 2020

Residential Tenancy Branch