



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEIGHBOURHOOD HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on May 29, 2020, wherein the Landlord sought an early end to tenancy pursuant to section 56 of the *Residential Tenancy Act* (the "Act") and recovery of the filing fee.

Only the Landlord's representatives, J.H., the Tenant service coordinator, and C.C. the Landlord's counsel, called into the hearing. They 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 Tenant did not call into this hearing, although I left the teleconference hearing connection open until 10:02 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's Representatives and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord's legal counsel testified that they served the Tenant with the Notice of Hearing and the Application on June 2, 2020 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of June 7, 2020 and I proceeded with the hearing in their absence.

Issues to be Decided

1. Is the Landlord entitled to an early end to tenancy?
2. Should the Landlord

Background and Evidence

The Tenant Support Coordinator, J.H. testified as follows. She confirmed that the Tenant originally moved into the rental property pursuant to a month to month tenancy which began March 15, 2016.

On November 27, 2019 the Landlord served a 1 Month Notice to End Tenancy for Cause on the Tenant. The Landlord obtained an Order of Possession on March 9, 2020. The Order of Possession was served on the Tenant by posting it to his door. Despite receiving the Order, the Tenant failed to vacate the rental unit.

J.H. stated that they did not enforce the Order of Possession as the B.C. Courts suspended their operations as of March 19, 2020 such that the Landlord was not able to obtain a Writ of Possession or otherwise take steps to enforce the Order of Possession before the Provincial State of Emergency was declared.

J.H. further stated that the Landlord then accepted rent payments from the Tenant in the amount of \$375.00 for the months April, May and June. J.H. testified that to her knowledge, the building manager did not issue receipts for use and occupancy only to the Tenant.

J.H. filed an affidavit in support of the Landlord's claim. She confirmed the contents of the affidavit to be true. In this affidavit, J.H. wrote that the Tenant has been physically aggressive with tenants and staff of the rental unit, including the following:

- On April 1, 2020, the tenant went to the security office at the Residence and attempted to fight with staff on duty. The Tenant was verbally abusive and threatened the security guard's life.
- On April 24, 2020, the Tenant fought with another resident who uses a scooter on her floor.
- On April 24, 2020, the Tenant assaulted another resident and guest and was charged with assault. The Tenant was taken into custody and released on April 25, 2020, wherein he returned to the Residence.
- On April 25, 2020, the Tenant physically attacked another resident who refused to call the police.
- On April 28, 2020 the Tenant threatened and verbally assaulted security staff at the Residence.
- On May 3, 2020 the Tenant threatened and verbally abused two residents of the Residence and security staff.
- On May 5, 2020, the Tenant brought a guest in the rental property which is contrary to the Landlord's policy during the COVID-19 Pandemic (and which is clearly noted in signage throughout the rental premises). The Tenant was verbally abusive to staff when this issue was raised with him.
- On May 7, 2020, a female resident at the Residence complained that the Tenant had threatened her and forced her to have sex with him otherwise he would hurt her. The victim refused to call police.

J.H. testified that the Tenant was arrested on numerous occasions since April 2020 due to his aggressive behaviour towards others. She confirmed that all of the arrests are related to Tenant's actions in the building and his aggressions towards other residents and staff.

In addition to the incidents described in her affidavit and detailed above, J.H. stated that there were two other incidents, the first being on June 5, 2020 when the Tenant, without provocation, punched another resident in his face and broke his glasses. The police were called and although the Tenant was not arrested he was given a warning.

The second incident occurred on June 14, 2020 at 5:50 a.m.; J.H. stated that again, without any provocation, the Tenant came down into the building lobby and punched another tenant in the face as that tenant was coming into the building. J.H. stated that the police were called, and charges are in the process of being laid for that assault.

Analysis

After consideration of the Landlord's undisputed testimony and evidence, and on a balance of probabilities I find as follows.

I find that the Tenant's original tenancy was ended in accordance with the Decision of the Residential Tenancy Branch made March 9, 2020.

In receiving rent from the Tenant after the date the tenancy ended and failing to issue receipts for "Use and Occupancy Only", the Landlord has created a new tenancy.

I find that the legal principle of *Res Judicata* does not apply to the current Application. Although the previous hearing dealt with the same Landlord and Tenant, a new tenancy has been created. Further, the issues arising since the hearing on March 9, 2020 have not been before the Residential Tenancy Branch. I therefore find it appropriate to consider the Landlord's request to end the new tenancy early.

Section 56 of the *Act* provides that a tenancy may be ended early if the Landlord provides sufficient evidence that the Tenant has

- significantly interfered with the Landlord or another occupant of the residential property;
- seriously jeopardized the health or safety or lawful right or interest of the Landlord or another occupant;
- put the Landlord's property at significant risk;
- engaged in illegal activity that
 - has damaged or is likely to damage the Landlord's property,
 - has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or
 - has jeopardized a lawful right of another occupant or the Landlord; or
- caused extraordinary damage to the residential property

and it would be unreasonable or unfair to the Landlord or other occupants to wait for a notice to end tenancy for cause to take effect (emphasis added)

In this case, I accept the Landlord's undisputed testimony that the Tenant has been physically and verbally abusive to staff and other residents of then rental property since April 1, 2020. The evidence before me confirms the Tenant has been involved in at least 10 altercations with staff and residents of the rental property, including four physical altercations. I also accept the Tenant Support Coordinator's testimony that the other residents are fearful of the Tenant due to his aggressive behaviour. Based on the Landlord's Agent's testimony as well as the documentary evidence filed, I find that the Tenant's behaviour is very frightening to the occupants of the rental property and has seriously and adversely affected their sense of security or safety.

I find that the Tenant's behaviour has escalated in the two and a half months since this new tenancy was created. I find that to allow this tenancy to continue would put others at risk and create an unsafe living and working environment for the residents and staff of the rental building.

In all the circumstances I am satisfied that it would be unreasonable for the Landlord to wait for a 1 month notice to end tenancy for cause to take effect. As such, I find the Landlord has met the test set forth in section 56 of the *Act*.

I therefore grant the Landlord's request for an early end to tenancy. In furtherance of this I grant the Landlord an Order of Possession effective immediately. This Order must be served on the Tenant and may be enforced in the B.C. Supreme Court.

Conclusion

The Landlord's request for an early end to tenancy is granted. They are granted an Order of Possession effectively immediately upon service on the Tenant.

The Tenant is reminded that Orders of Possession granted pursuant to section 56 of the *Act* are enforceable during the Provincial State of Emergency. The Tenant is further advised that should he fail to move from the rental unit, the Landlord may recover from him any costs associated with enforcing the Order of Possession and obtaining a Writ of Possession in the B.C. Supreme Court.

I find the Landlord is entitled to recover the filing fee pursuant to section 72 of the *Act*. I grant the Landlord authority to retain \$100.00 from the Tenant's security deposit as recovery of this filing fee.

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 19, 2020

Residential Tenancy Branch