



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on May 28, 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.

The hearing of the Landlord's Application was scheduled for teleconference at 11:00 a.m. on June 15, 2020. Only the Landlord and her translator, J.L., 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 11:33 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, her translator, 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.

By Director's Order dated March 30, 2020 Notice of a hearing may be served by e-mail if the sender and recipient e-mail addresses have been routinely used for tenancy matters.

The Landlord confirmed that she regularly communicated by email with the Tenant when he applied for the rental unit. She provided copies of such communication in evidence before me.

In terms of service of the Landlord's Application, Notice of Hearing and evidence, the Landlord sent a text message to the Tenant advising him that she would be sending him important documents by email; in response the Tenant stated that he no longer used the email address; he did not provide an updated address. The Landlord then emailed the hearing package to the Tenant on May 29, 2020; she also followed up with another text message to him confirming she had sent the documents by email.

I find the Tenant and Landlord used email to communicate about tenancy matters. Although the Tenant sent a text to the Landlord indicating he no longer used his email account, I find he did so simply to avoid service of legal documents. The Landlord also sent the Tenant text messages to confirm he would receive important documents by email as well as a text message to confirm those documents had been sent. The Landlord also testified that after the Tenant received proof of her evidence submission the Tenant demanded \$400.00 to move out of the residence; in doing so, I find the Tenant acknowledged the upcoming hearing. I therefore find that the Tenant is deemed served with Notice of this participatory hearing June 1, 2020, three days after the email was sent.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

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

Background and Evidence

The Landlord testified that she lives in the basement unit of the rental property and the Tenant resides in the upper unit.

In support of her request for an early end to tenancy the Landlord testified as follows. She stated that the Tenant got into a violent fight with another man on April 27, 2020. The Landlord was home at the time and submitted a video of the fight which she took on her cell phone.

The Landlord confirmed that she was with her two-year son, who witnessed this violent incident and was in turn was very upset by it. She also testified that she was initially worried about reporting it to the police as she is afraid of the Tenant.

The Landlord confirmed she did not know the man who the Tenant was hitting and kicking in the video nor does she know the woman who broke the fight up, however, she stated that she had seen them before and believes they may live in the neighbouring building.

The Landlord submitted two witness statements confirming they also saw the fight and were very disturbed by the altercation. The Landlord stated that other tenants and neighbours have contacted her and expressed their concerns. She provided a signed document from five individuals who agreed with the statement that the Tenant is a violent person.

The Landlord further testified that on May 5, 2020 she heard very loud banging from the Tenant's rental unit. She went upstairs and observed the Tenant and another man who appeared to have been in a fight.

Although she had concerns about how the Tenant would react, she then provided the video of the earlier fight to the police. She stated that at that point she realized that if she didn't do something he would not move out and would continue to be violent at the rental property.

The Landlord further stated that she was informed by the Tenant's former roommate, that the Tenant assaulted him when he lived with the Tenant and his roommate had to call the police. She confirmed that she only became aware of this after the roommate had vacated the rental unit.

The Landlord testified that it appears as though the Tenant may have vacated the rental unit; however, she is not sure as he has left some personal belongings. She stated that after she forwarded the evidence receipt to the Tenant he demanded the sum of \$400.00 to move out. She felt pressured to do so and gave him \$400.00. She stated that although he may have moved out, he left some valuable items such that she is not certain he will not return.

Analysis

I accept the Landlord's testimony that the Tenant may have vacated the rental unit on June 10, 2020, although as he left items of value, it is possible he intends to return. As such, I considered her application for an early end to tenancy.

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 engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant. The evidence before me confirms the Tenant has been involved in at least three physical altercations at the rental property, including one which was videotaped by the Landlord. The video evidence shows the Tenant seriously assaulting another person at the rental property and in the presence of the Landlord, her small child, and other residents and neighbours. Based on the Landlord's testimony as well as the documentary evidence filed, I find that this assault was very upsetting to the occupants of the rental property and has adversely affected their sense of security or safety.

I also accept the Landlord's testimony that she is fearful of the Tenant and is worried that he will retaliate due to her providing the video of the assault to the police. I also

accept her testimony that she felt pressured to provide the Tenant the \$400.00 he demanded to move out of the residence. While it is possible he has permanently vacated the rental unit, I find it more likely he will return due to the items left in the unit. In all the circumstances I find that it would be unreasonable for the Landlord to wait for a notice to end tenancy for cause to take effect.

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.

The Landlord is reminded that she must comply with Part 5 — Abandonment of Personal Property of the *Residential Tenancy Regulation* in terms of the Tenant's personal possession left at the rental unit.

http://www.bclaws.ca/civix/document/id/complete/statreg/10_477_2003#part5

Conclusion

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

The Landlord may retain \$100.00 from the Tenant's security deposit as recovery of the 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 16, 2020

Residential Tenancy Branch