



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for an early termination of tenancy and Order of Possession, pursuant to section 56.

The landlord, the landlord's daughter/ agent ("agent T.H.M."), the landlord's son in law/agent (agent "J.W."), the tenant and the tenant's ex-partner/representative (the "representative") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenant was personally served with the landlord's application for dispute resolution on July 8, 2020. I find that the tenant was served in accordance with section 89 of the *Act*.

Preliminary Issue- Landlord's Evidence

Rule 10.2 of the Rules states:

An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.

Agent J.W. testified that the majority of the landlord's evidence was served on the tenant with the landlord's application for dispute resolution; however, some texts and e-mails between the parties were not served on the tenant.

The tenant's representative testified that the USB stick provided by the landlord on July

8, 2020 did not work and that the only evidence they received were the statements from agent T.H.M., agent J.M., and the neighbour ("tenant P.K."), as well as some e-mails and pictures.

Rule 3.10.5 states:

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

The landlord did not confirm with the tenant that she could access the evidence.

Pursuant to Rule 10.2, I decline to consider evidence that was not included in the July 8, 2020 evidence package. Pursuant to Rule 3.10.5, I will only consider the evidence received by the tenant on July 8, 2020.

Preliminary Issue- Tenant's Evidence

Rule 10.5 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") state:

The respondent must ensure evidence they intend to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible and at least two days before the hearing.

Both parties agree that the respondent (tenant) served an agent of the landlord with their evidence package on July 29, 2020. The landlord's agent J.W. testified that the landlord did not have time to review and respond to the evidence.

The Rules state:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.

Pursuant to the above, I find that the tenant served the landlord with her evidence one day prior to the hearing, contrary to Rule 10.5.

In determining whether the delay of a party serving her evidence package on the other party qualifies as unreasonable delay I must determine if the acceptance of the evidence would unreasonably prejudice a party or result in a breach of the principles of natural justice and the right to a fair hearing. The principals of natural justice regarding the submission of evidence are based on two factors:

1. a party has the right to be informed of the case against them; and
2. a party has the right to reply to the claims being made against them.

In this case, agent J.W. testified that the landlord did not have time to review and respond to the evidence contained in the tenant's evidence package. Based on this testimony I find that the landlord did not have an opportunity to be informed of the tenant's evidence against him. I therefore exclude the tenant's evidence from consideration.

Issues to be Decided

1. Is the landlord entitled to an early termination of tenancy and Order of Possession, pursuant to section 56 of the *Act*?

Background and Evidence

While I have turned my mind to the evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 15, 2020 and is currently ongoing. Monthly rent in the amount of \$1,450.00 is payable on the first day of each month. A security deposit of \$725.00 and a pet damage deposit of \$725.00 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the subject rental property is a house with two upper suites and one lower suite. The tenant resides in the lower suite. Tenant P.K. resides in one of the upper units and the other upper unit is occasionally occupied by the landlord and or his agents or used as a short-term rental.

Agent J.W. testified that the landlord is seeking an early end to this tenancy because the tenant has threatened, harassed and assaulted the landlord, the agents and tenant P.K.

Both parties agree that due to the deteriorating relationship between tenant P.K. and the tenant, they had a no contact agreement.

Agent J.W. testified that the tenant has been hostile and aggressive from the start of the tenancy and the tenant has been aggressive towards tenant P.K. who is in her late '70's. Agent J.W. testified that the landlord decided to pursue the end to tenancy after the tenant threatened to smash in agent T.H.M.'s face on June 12, 2020.

The landlord testified that on June 12, 2020 he was accosted by the tenant when he attempted to enter his suite. The landlord testified that the tenant yelled aggressively at him about moving her children's bikes and advanced towards him in a threatening manner. The landlord testified that he was shocked and stepped into his doorway and asked the tenant to leave but the tenant continued to scream at him as he closed the door. The tenant and the tenant's representative did not dispute the above testimony.

The landlord testified that he then called agent T.H.M. who resides out of province and consulted with her about the above incident. The landlord testified that while he was on the phone with agent T.H.M. the tenant and her representative knocked on his door. The landlord testified that he told the tenant and her representative that agent T.H.M. would be present for all future communications. The four proceeded to have a conversation regarding issues the tenant had with the tenancy. The landlord testified that while they were discussing the bike issue, the tenant became aggressive and threatened to smash in agent T.H.M.'s face.

Agent T.H.M. testified that when discussing the tenant's concerns, she provided several different solutions, the tenant did not like them and said, "I'm going to smash your fucking face". T.H.M. testified that she believed the tenant intended to physically harm her and that she felt uneasy and scared.

The tenant's representative testified that the tenant did not intend to physically assault agent T.H.M. and only said that she "wanted to smash in agent T.H.M.'s face" because she was frustrated with agent T.H.M.'s demeaning attitude. The tenant's representative testified that agent T.H.M. talked down to the tenant and failed to seriously address the tenant's concerns with the property. Agent T.H.M. disputed the above testimony.

Both parties agreed that tenant P.K. called the police after hearing yelling and that the police attended on June 12, 2020.

Agent J.W. testified that he and agent T.H.M. decided to travel to the subject rental property to assist the landlord in dealing with the tenant. Agent J.W. testified that they arrived at the property on June 24, 2020 and witnessed the tenant yelling at tenant P.K. and mocking her Christian beliefs. The tenant's representative testified that the tenant only yelled at tenant P.K. because tenant P.K. told her that she should be a better Christian woman and mother.

Both parties agree that on June 25, 2020 the agents, the tenant and the tenant's representative had a conversation regarding the tenant's behaviour, the tenant's maintenance concerns and issues with the shared garden. Agent J.W. testified that the tenant continuously insulted agent T.H.M. and refused to listen to their concerns. Agent J.W. testified that the tenant stormed off and proceeded to use the landlord's lawnmower to cut the grass which was the subject of some of the tenant's concerns. Agent J.W. testified that he repeatedly asked the tenant to stop and she refused and proceeded to push the lawn mower towards himself and nearly ran over his foot.

The tenant's representative testified that the tenant was just very frustrated with the agents and that she wanted the grass cut because ticks and other dangers can live in long grass which put her children at risk. The tenant's representative testified that the agents were not acting in good faith when they had the meeting and were treating the tenant in a demeaning manner and that is why the tenant started mowing the lawn against the agents' requests.

Agent J.W. testified that after all the issues with the tenant and her worsening behaviour, agent T.H.M. and the landlord personally served the tenant with a warning letter on June 27, 2020 which stated that if the tenant did not stop acting aggressively towards the agents, tenant P.K. and all other guests, the tenant would be evicted. The tenant confirmed receipt of the above letter on June 26th or 27th, 2020.

Agent J.W. testified that he was across the property at the time the warning letter was served on the tenant and could hear the tenant yelling and swearing at the landlord and agent T.H.M. Agent T.H.M. testified that the tenant swore at her and yelled at her when she served the tenant the warning letter and proceeded to send her 26 aggressive and derogatory text messages that same day. Agent T.H.M. testified that the tenant has continued to harass her through text messages. The tenant and her representative did not dispute the above testimony. The tenant's representative testified that the tenant

was very upset when she received the warning letter because the landlord and his agents were not listening to her maintenance concerns and were speaking to her in a demeaning and rude manner.

Agent J.W. testified that the landlord decided to seek an emergency end to tenancy based on the ongoing issues with the tenant and the tenant's failure to change her behaviour after receiving the warning letter.

Agent J.W. testified that on July 25, 2020 tenant P.K. informed him that the tenant assaulted her in the garden of the subject rental property while she was picking berries. Agent J.W. testified that tenant P.K. informed him that the tenant attempted to throw her to the ground. Agent J.W. testified that tenant P.K. informed him that she suffered some cuts/abrasions and called the police to report the assault.

The tenant's representative testified that tenant P.K. used her body presence to get the tenant's daughter, who was standing near the berry bushes, to move away from the berries. The tenant's daughter moved away from the berries and tenant P.K. followed her. The tenant's representative testified that the tenant then put herself between tenant P.K. and her daughter and that tenant P.K. continued to try to get past the tenant to the tenant's daughter so the tenant grabbed tenant P.K.'s arm and pushed her away from her child.

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. 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.

An early end of tenancy is an expedited and unusual remedy under the *Act* and is only available to the landlord when the circumstances of the tenancy are such that it is unreasonable for a landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the *Act* for cause. At the dispute resolution hearing, the landlord must provide convincing evidence that justifies not giving full notice.

I find that the actions of the tenant occurring after the landlord applied for dispute resolution cannot be taken into account when determining if the tenancy should end early under section 56 of the *Act*. I will only take into account evidence which led to the application for an early end to tenancy. In this case, the landlords filed for dispute resolution on July 3, 2020; therefore, I will only consider events on or before July 3, 2020.

Based on the evidence of both parties and their representatives/agents, I find that the tenant threatened to assault agent T.H.M., sent agent T.H.M. harassing and derogative text messages, intimidated the landlord, frequently yelled and spoke aggressively to the landlord, his agents and tenant P.K.

The tenant's representative provided a variety of explanations for the tenant's inexcusable behaviour. Even if the landlords did not adequately address the tenant's maintenance concerns (though I make no finding on the matter), the tenant is not entitled to threaten acts of violence or intimidate others with yelling and vulgar language. The correct course of action would have been to file an application for dispute resolution with the Residential Tenancy Branch regarding the maintenance issues.

I find that the tenant's behaviour significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. Given the repeated

instances of aggressive behaviour/language and the threat of assault, I find that it would be unreasonable for the landlords to wait for the effective date of a One Month Notice under section 47 of the *Act*. I therefore award the landlord a two-day Order of Possession.

Conclusion

Pursuant to section 56 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: July 31, 2020

Residential Tenancy Branch