



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFT

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an early termination of the tenancy and an Order of Possession, pursuant to section 56 of the Act. He also applied to recover the \$100.00 cost of his Application filing fee.

The Landlord, the Landlord's wife, S.J., the Tenant, and an advocate for the Tenant, S.W. ("Advocate"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord said he served the Tenant with the Application, Notice of Hearing and his documentary submissions by posting them on the Tenant's door. He said he took a picture of this; however, I was unable to find such a picture in the evidence before me. The Landlord submitted a Proof of Service form, which indicates that S.E.B. observed the Landlord attach a copy of these documents on the Tenant's door on July 22, 2020. However, the Tenant denies having received any documents about the hearing from the Landlord. The Tenant testified that his probation officer recommended that he contact the RTB about his rental situation. The Tenant said when he did this, he learned about the hearing, and obtained a copy of all the Landlord's Application documentation from the RTB. In the absence of the photograph of the Landlord's having served the Tenant by posting the documents on the Tenant's door, and given concerns that I have had with the embellishment of the Landlord's evidence, as noted at the end of the Decision, I find it is more likely than not that the Landlord did not properly serve the Tenant with the Application, Notice of Hearing and documentary evidence. As a result, I have not considered the Landlord's documentary evidence in this proceeding.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession based on the early termination of the tenancy in accordance with section 56 of the Act?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on June 11, 2020, with a monthly rent of \$625.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$325.00, and no pet damage deposit. The Parties advised that the Tenant rents a room in the Landlord's residential property, where the Landlord also lives; however, they agreed that the Landlord does not share a kitchen or bathroom with the Tenant.

In his Application, the Landlord explained why he has seeks an early termination of the tenancy, as follows:

This Tenant move in by June 15 2020. When he move in after that he start problem with other tenants. He smoke marijuana in the room and middle of the night knocking the other tenants bedroom door and asking them to get money, and the same time he bother us to. Other tenant call the police 2 times and 1 time I called the police. They came over and told him to move out in a day and don't make any problems with Landlord or other tenants. Police said to me that he have so many cases.

[reproduced as written]

In the hearing, the Landlord said:

Every day an issue and every day police come. Yesterday he fought with one

tenant and he hit the fridge door. The police were called.

Mostly whatever happened, we tried to submit to you. All the time the police are coming, because he makes trouble. If I'm wrong, we have three kids. Damaging . . . physically assaulted the person. One time he's talking and he's lying all the time. Affected us psychologically all the time. My husband has to deal with him. Upstairs tenant calling.

This person one time asked for rent. He verbally abusing and escalating things. Even the police say he is a person they cannot even deal with. Police said to go to the RTB. He cannot stay with this type of family.

The Advocate asked the Tenant some questions in the hearing, including the following questions and answers.

First, one point would be about the police attending the unit. How many times have the police attended that you're aware of?

The police have been here four times. [The Landlord] called them one time and three times I called them. Those were all last month and one was yesterday.

You have called the police?

Oh yes, I had to get some sort of help. I called them three times and one time was from him.

Why did you call the police?

I was wondering what was going on. All this stuff was happening. I'm getting the tenants, not the Landlord, knocking on *my* door, and one time trying to open my door with no papers.

Who opened your door?

I don't know his name, but one of the tenants who lives next door to me. It is a shared occupancy. And there is about five people in here. There's no locks on the doors. There is a lock on the door, but he tried to physically to get in. That's him right there, the cops call will back me up even more. I forget stuff with my epilepsy. This tenant is trying to get inside my room. Actually, he is awake right

now, I'm looking at him right now.

You mentioned having epilepsy. Does this cause you to have seizures?

Oh yes it does, I'm epileptic. I was diagnosed with it in 2017. [The Landlord] and other tenants came barging into my room one time and found me laying on the ground and they are stereotyping all the way. I could fall over and hit something. He was really trying to say that I'm going to die.

What normally happens – what symptoms?

Well I take my medication every day. I don't have seizure every – maybe once every month and a half. And they came into my room and they seen me laying on the ground.

Was that a time when police or anyone, paramedics were called?

No. That happened ... I don't know.

One time the tenant and Landlord would have seen your seizure; the other time, would they have witnessed it?

The first time when they came into my room and they saw me laying in the room. The second time was my tenant next door knocking on door aggressively, very aggressively, four times, four times. . . I knew it wasn't the Landlord, he tried opening the door, jiggling it, scary. And then that's when I knew he's trying to get inside the door. I don't know what these tenants are doing. They speak in their language. They try to break into my room, I don't know what they're saying. What's going on?

Have you spoken to the Landlord about it?

I have not spoken to the Landlord about coming into my room. I have had the cops talk to the tenants about coming into the room.

He also mentioned or referred to – smoking in the house. Have you ever smoked in the house?

I have one time when I was in front of Mr. [G.] and blew it outside the window.

I've never signed no written agreement that I'm not supposed to blow smoke outside the window. Nothing saying there's no smoking in the house.

The Landlord also referred to, described, you knocking on other tenants' doors and asking them for money. Have you ever been loaned money by another tenant?

Yes, I was loaned \$10.00 by another tenant when I . . . about I'd say at the end of June and start of July. I paid him right back.

Have you asked any other of tenants for money? No.

So when he describes you knocking on the other tenants' bedroom doors and asking for money, have you ever knocked on *other* tenants' doors or needed to knock on the doors? No.

Re rent, which, as the Arbitrator said, is not the subject of this hearing, you paid rent and [a security deposit] at start of tenancy when you moved in, but have you paid anything since then?

No. I've been here for three months and I have not paid since June 11, because I have reasons on why I am not paying my rent.

You have to pay full rent every month, and any amount . . . do you understand that? Yes.

Are you able and willing to do it if your tenancy continues?

Yes, I am able to do that because me being on disability, it pays my rent direct deposit. I've been doing that since I was 18 and I'm 32 years old now.

You want to know what's going to happen with this Application?

Yeah, I would like to know what's going on, but I would like to say lies are going on. I would like to get them confirmed please.

One other point, the Landlord said, also in the Landlord's Application, police said you have so many cases. You [the Landlord] provided to us a printout that appears to be a list of court dates.

That's not everyday that the police came. They came four times is what you said? [To the Landlord:] Where did you obtain that information [the list of court dates]?

Online. The police told me he is such a criminal. He said you can check it.

Agent: This document has various dates from 2006 to the present, but this is information online publicly. It doesn't provide details or the reason for these court dates. I'd like to ask [the Tenant] a question about this. **Have you been charged with anything relating to your current tenancy?**

No, nothing has happened inside of here.

It looks like you have these various things that go back . . . are you currently awaiting a court date?

Yes, because of one reason when I was inside of a hospital, I got into an altercation with a security guard, I pushed him. . .; that's from 2018.

Are you currently reporting to a probation officer?

Yes, I'm waiting for this to be taken off.

You need to provide them with an address where you're residing? Is your probation officer aware of what's happening with your tenancy?

Yes, I've talked to them about BC mental brain health. I've had to talk to them about what's going on. They helped me out with ...to go and talk to you and regional clinical health, because this is stressful stuff.

You've said the police attended where you live a number of times and you've called them. You have spoken with the police when they attended?

I spoke to them every time. They only came here four times. Three times me calling them.

What did they say to you? Any steps to follow up?

Okay, 'we can't come here. [You're] not going to be kicked out. . . not following the proper procedures. No violence, nothing going on. If called on here again,

you guys have to get the legal registration by RTB, if you want the police to come down here.'

In Landlord's dispute information, the Landlord said they came over and told him to move you out in a day, and don't make any trouble? Did the police tell you that you had to move out in a day?

Not once. That shouldn't be their job, really.

Have you ever received any written warnings from the Landlord?

Just looking at my receipt. Since June 11, no written documents, nothing to sign, other than on June 11 when they gave me my keys to get inside my room and my keys to live here.

Nothing from them saying that they are concerned about the things they have mentioned in this hearing? Have they spoke with or written to you about it?

Nothing.

When you picked up this application, was that the first time that some of these concerns have been brought to your attention?

I had to educate myself about getting these papers on my self. And be knowing. I was feeling some stress was going on. How the Landlord was talking to me, how they weren't talking to me. So I was wondering what was going on. They were asking for rent on the 15th of the month. All this type of stuff. I'm calling the cops. The cops said, 'you're not getting kicked out; go to RTB, we can't do anything'. If you want more help, that's when I went to RTB and got all this information.

I'm gonna say that I don't have nothing else to give as testimony. Oh yes, I do, just about the criminal record. That was in 2011, and they're bringing up stuff trying to stereotype me. That was when I was immature, and now I'm mature. I have medical condition stereotypes. It's not relevant.

I asked the Tenant a few questions: Do you know why your neighbour was banging on your door trying to get in?

I don't have any idea why he would be trying to get in. The only thing that I have,

and I don't want to get into racism, but when [the Landlord] would talk inside a language they would change. That's the only reason I have.

Why or how did they find you on floor?

They never told me how they barged into my room. They never told me no reason.

Are there any other tenants who don't get along with you?

We get along very well; a neighbour lent \$10 very well. Since the last roommate had a little talk, which I witnessed downstairs, all of a sudden then his verbal altercation has been very different. It's been less friendly and that's a good point; it actually has been less friendly, they have been throwing my clothes in the mop bucket, taking out my kitchen appliances in the garbage; throwing my forks inside the garbage. I'm the one being mature. The holy ghost is in me and I will not lower my standards down to somebody else,

The Landlord said:

I hope you understand, nothing is matching. Someone took his stuff from his room and is trying to get in his room? He said he gave post dated cheques, but he didn't. He said he didn't get the notice; then how he knows the hearing date? You don't have to go the police.... The police can't do anything to him.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim, in this case, the Landlord.

Section 56 of the Act establishes grounds on which a landlord may apply for dispute resolution to request an early termination of a tenancy and order of possession. In order to grant such an order, I need to be satisfied that the Tenant has done any of the following:

1. significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. put the landlord's property at significant risk;
4. has 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;
5. has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
6. 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 tenancy under section 47 to take effect.

I find that the Landlord over-stated his case with evidence such as “Every day an issue and every day police come.” [emphasis added] The Tenant’s undisputed evidence was that the police came four times in his tenancy, and he said he called them three of these times.

I find that the Landlord provided insufficient evidence that the Tenant has committed any violence or anything illegal during his short tenancy. I find that his evidence of the Tenant’s past charges is irrelevant to the tenancy.

In this case, I find that while there may be a clash of personalities at times, the Landlord has not provided sufficient evidence to establish any of the grounds set out in section 56 of the Act for an early end to the tenancy. Therefore, I dismiss the Landlord’s Application wholly, without leave to reapply.

Conclusion

The Landlord is wholly unsuccessful in his Application. He provided insufficient evidence that the Tenant breached any grounds in section 56 of the Act, in order to obtain an early end to the tenancy under this section of the Act.

The tenancy will continue until ended in accordance with the Act and Regulation. **The Tenant is cautioned** to always pay his rent in full, as required by the Act and tenancy agreement.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: August 24, 2020

Residential Tenancy Branch