



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

The words tenant and landlord in this decision have the same meaning as in the Act, and the singular of these words includes the plural.

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

All named parties attended the hearing. The landlords were represented at the hearing by their counsel, DR. As both parties were in attendance, service of documents was confirmed. The tenant confirmed receipt of the landlord's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Issue(s) to be Decided

Should this tenancy end early?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The

principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. He owns a rural 10 acre property that contains the house he lives in, another suite rented out by his daughter and a third cabin located some distance away from the house. The tenant occupies the cabin and he has been renting there for the past 9 years. The parties share an internet connection.

On July 14, 2020, the landlord posted a notice on the tenant's door indicating he would be inspecting the rental unit for rot since the tenant complained about that issue. The following day, the tenant emailed the landlord indicating he will not allow the landlord to step into his yard and the tenant would charge the landlord with trespassing if he did. That same night, the landlord was given a letter from his internet service provider advising there were copyright infringements made from his IP address as copyrighted material was being downloaded. The landlord fears there are both financial and legal repercussions for him if the tenant continued to download copyrighted material.

On July 18th, the landlord served 5 notices to the tenant. To do this, the landlord installed a mailbox to the outside of the tenant's rental unit. The tenant sent an email to the landlord the same night and the landlord provided a copy of it into evidence. The landlord testified that the email causes him and his family to fear for their safety due to the veiled threats in the email.

Portions of the email were read out during the hearing and the landlord described the tone of the email to be threatening. In the email, the tenant tells the landlord about incidents where he previously assaulted a former landlord by *'kicking him in the ribs, grabbing him by the neck and throwing him in the hallway'*. A second portion highlighted by the landlord in the email describes an incident where his girlfriend's father *'went to jail with a busted arm'... so be very careful about trying to invade my lawful right to privacy*. A third incident of *'dropping a very large intoxicated male to the ground and choking him out'* while working as a cook in a pub was described. Lastly, the tenant states that his previous employment as a landlord/caretaker/security *'makes you look over your shoulder and wonder if someone is waiting for you with a knife or something, or wondering if my cat will be found dead'*.

One hour after receiving the email, the landlord testified that the newly installed mailbox was thrown at his wife, missing her but landing on their balcony. The landlord's wife testified that while she was kneeling down gardening on the balcony, the tenant threw

an unknow object at her from 15 feet away. The tenant repeatedly told her to '*shut the F...up*' when she asked him what he was doing and why he was being aggressive. She lives in fear of the tenant's retaliatory behaviour since the incident.

Police were called and an email from the investigating officer was provided. The officer's email states the officer spoke to the tenant who told her he meant to throw the mailbox on the deck but didn't throw it at anyone since he didn't know the landlord's wife was there until after he threw it.

Testimony of subsequent incidents such as further paperwork that was served upon the tenant being strewn upon the landlord's tennis court and the tenant's refusal to allow the landlord and his young employee to access their property to retrieve firewood was provided by the landlord as further proof of the tenant's disturbing behaviour. The landlord's daughter testified that the tenant woke her up at 5:21 in the morning by loudly honking his horn and shining his headlights into her unit on July 26th. She knows this was the tenant because the incident was captured on video and provided for this hearing.

The landlord testified he and his family live in constant fear from the tenant and want to end the tenancy early.

The tenant provided the following testimony. He's lived here for 9 years and was friends with the landlords. Their relationship turned bad when the tennis court fence went down while the landlords were in Mexico. The tenant offered to fix it, however the landlord purchased the wrong materials. Since then, the landlord has been harassing the tenant to recover the cost. Also, the tenant was going to help the landlord sell 2 cars but the landlord changed his mind and got upset at the tenant. Since then, the landlord has been harassing him with emails and confronting him face to face.

On July 14th, the landlords came to his rental unit, banging on the door. The tenant wouldn't come to the door because the tenant felt afraid for his own safety. The tenant did all he could not to confront the landlord. The mailbox installed outside the tenant's residence was unnecessary because he already has one on the front gate.

He was upset the landlord put up another one, so he removed it and gently placed it on the wooden bench outside the landlord's house. Although the landlords claim he destroyed it, he didn't.

Regarding the email sent, the tenant states he was being threatened by an aggressive landlord. The email was used to show the landlord that the tenant has PTSD and he gets nervous and tense in confrontation. The email he sent isn't threatening, it's misunderstood. The landlord is twisting the meaning of the email as a personal attack on him.

The reason the tenant honked his horn loudly was because he saw a cougar on the property and he was scaring it away with his car horn and lights. He didn't want anybody's pets to be endangered by the big cat. The incident in blocking the landlord's access to getting firewood didn't happen. The tenant was simply out walking his dog when the landlord started yelling at him and taking pictures.

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.

Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] provides further clarification at part B:

... there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an **imminent danger to the health, safety, or security of a landlord or tenant**, or a tenant has been denied access to their rental unit. (bold emphasis added)

...

Applications to end a tenancy early are for **very serious breaches only** and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker. **The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach**, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

Although the landlord states that the copyright infringement issue can form a basis for an early end to tenancy, I am not satisfied this is the case. While there may be potential for a future action to be launched against the landlord, there is no **imminent** danger to the landlord's health safety or security resulting from this action.

I have read the email sent to the landlord by the tenant on July 18th. I find the tone of the email to be both menacing and threatening. Telling the landlord that he had previously kicked a former landlord in the ribs, broke another person's arm and choking-out an intoxicated person are all indicative of the tenant's self-admitted violent behaviour. I see the email as a veiled threat to the landlord to cause harm to him and his family.

Despite the tenant's testimony to the contrary, I am satisfied the tenant threw the mailbox at the landlord's house if not specifically aimed at the landlord's wife. The email from the police officer provides uncontroverted proof that the mailbox was thrown, not gently placed as the tenant contends. Throwing the mailbox is, in itself, an act of aggression due to it's potential to cause harm to another person or the landlord's property. Likewise, I am satisfied the reason for waking the tenant's daughter in the early hours of the morning with blaring horns and headlights was an aggressive action brought on to intimidate the family, not to scare away a cougar.

The landlord has provided sufficient evidence to satisfy me that there is an imminent danger to the health, safety or security of the landlord and his family and that it would be unfair to wait for a notice to end tenancy under section 47 of the Act. As such, I order that the tenancy be ended early in accordance with section 56 of the Act. The landlord is awarded an Order of Possession effective 2 days after service upon the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants 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.

This decision is legal, final and binding 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 25, 2020

Residential Tenancy Branch