



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes ET, FFL

Introduction

On August 19, 2020, the Landlord made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession pursuant to Section 56 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Y.B., R.M., M.S., and C.D. attended the hearing as agents for the Landlord. The Tenants both attended the hearing as well. All parties provided a solemn affirmation.

Y.B. advised that the Tenants were served the Notice of Hearing and evidence package by posting it to their door on August 20, 2020. Tenant J.M. confirmed that he received this package that day. Based on the undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served the Notice of Hearing and evidence package. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

Tenant D.P. advised that they served their evidence to the Landlord by email on or around August 25, 2020 and August 31, 2020. Y.B. confirmed that the Landlord received this evidence and took no issue with when or how it was served. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the most current tenancy started on November 1, 2015, that rent was currently established at \$569.00 per month, and that it was due on the first day of each month. A security deposit of \$295.50 was paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

With respect to the Landlord's request for an Order of Possession based on an early end of tenancy, Y.B. advised that J.M. approached caretaker C.D.'s car on August 11, 2020 because he was upset about how a newsletter was distributed to him. He knocked on her car window, and he was yelling at her about this newsletter. When she responded, he shouted that this was a "typical response from a woman." He also exclaimed that "you're a woman and you're all the same."

When C.D. advised him that his conduct was unacceptable, J.M. then accused her of wearing inappropriate work attire that would allow for her "boobs to hang out". He stated that he would report her to the Landlord because of her outfits. It is Y.B.'s belief that J.M.'s comment that he would file a report about C.D.'s attire is a direct threat to C.D., and this would also form the basis for the early end of tenancy. She submitted the complaint email from C.D. and an incident report filed by another resident to support the Landlord's position regarding J.M.'s conduct.

She stated that the Landlord received an apology from J.M. the next day, but it was his opinion that C.D. should not wear such clothing. She also stated that a female resident of the building witnessed this exchange and she filed an incident report with the Landlord. She submitted that J.M.'s conduct was highly inappropriate and as a result, the Landlord filed a report through WorkSafe BC because they believe J.M. sexually harassed C.D. The police were never notified of this incident; however, the Landlord is

of the opinion that J.M.'s behaviour was a threat to C.D.'s livelihood. In addition, as the Landlord has other female staff employed in that building, they have been restricted from working in this building for their own protection.

C.D. recounted the incident on August 11, 2020 and confirmed that she was sitting in her car when J.M. pounded on her window. He was yelling and verbally attacking her. As he would not stop yelling, she advised him that he was "out of control", to which he then made the comment about reporting her due to her work attire. She stated that J.M. is a large, aggressive man, and this incident left her traumatized.

She testified that she was in the office later that day filing an incident report regarding J.M.'s conduct, and he came banging on the office door. She recognized his voice and she did not open the door as she was fearful of her safety. J.M. eventually left after there was no response.

C.D. advised that there were two other incidents in the past that have caused her to feel uncomfortable. She stated that when she was first hired a year ago, J.M. made a comment to another resident about "who that hot blonde was", and it was in reference to C.D. As well, she stated that approximately six months ago, she was in the office when J.M. entered and was extremely aggressive and angry because he believed she locked up a moving dolly. However, while he was verbally aggressive, she could not recall the exact details of what specifically was said or what J.M. did. She submitted that after asking him to calm down multiple times, he eventually left the office. The police were never called about this incident either.

R.M. advised that the sexual nature of J.M.'s comments are unforgivable and justify the Application for the early end of tenancy.

J.M. advised that he suffers from bi-polar disorder and on August 11, 2020, he woke up in a "black mood." He confirmed that he approached C.D.'s car and knocked on her window as he had concerns about how a newsletter was delivered to him. He asked her if she was "playing games" and she exited her car. He confirmed that he made the disparaging, generalized comments demeaning women and the comment about her inappropriate work attire. He then walked away and upon reflection of his actions, he acknowledged that his actions were inappropriate, so he wrote an apology letter the next day. He stated that he was remorseful, that this was out of character, and it was a result of his bi-polar disorder.

He confirmed that he was upset on August 11, 2020, but he is not a violent person. He is a large man and a loud talker, but he is not threatening. He also acknowledged that he did knock on the office door later that day as he wanted to give C.D. a note of apology.

Regarding the incident six months ago, he stated that what C.D. said was inaccurate. He has the utmost respect for her as she is a tough lady that he would not “tangle” with. He confirmed that he went into the office to ask about the dolly and that C.D. had said something to him loud and aggressively. He confirmed that he was upset and that he “leaned forward”; however, when C.D. warned him, he sat back down and then eventually left the office. He cited reference letters submitted as documentary evidence to support his position that he is of good character and that the incident at C.D.’s car was an isolated event. He also submitted a letter from his doctor which confirms his bi-polar diagnosis.

D.P. advised that J.M. is deaf and that as a result, he speaks particularly loudly. This can be misconstrued as threatening. She stated that he is calm, kind, and reasonable and he has positive relationships with the other residents in the building. She stated that his bi-polar disorder was exacerbated by the stress of the building eventually being demolished and that this was the reason for the incident by C.D.’s car. Consequently, she submitted that J.M. was not responsible for his thoughts or actions during this incident.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 56 of the *Act* establishes the grounds for the Landlord to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. In order to end a tenancy early and issue an Order of Possession under Section 56, I need to be satisfied that the Tenants have 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.

When reviewing the totality of the evidence before me, I understand the concerns of the Landlord; however, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

With respect to the Landlord's submissions, the consistent and undisputed evidence is that on August 11, 2020, J.M. made extremely inappropriate comments to C.D. about females in general, and then about her attire. While I acknowledge that the very nature of these comments is tremendously insensitive and unacceptable, and that J.M. should be admonished for making them, I do not find that there has been sufficient evidence presented that demonstrates that this incident in itself meets the elevated threshold of an early end of tenancy Application.

Furthermore, with respect to the incident that C.D. referred to in the office six months ago, I note that this happened a substantial time before this Application was made. As such, I find that little weight can be given to this incident in relation to this Application. Moreover, when reviewing the Landlord's submissions regarding J.M.'s behaviours throughout the last year, again, while his comments are completely deplorable and offensive, I do not find that the Landlord has submitted persuasive or compelling evidence to demonstrate that J.M.'s behaviours or actions have posed an immediate threat or danger. Based on what has been presented, as the threshold for substantiating an early end of tenancy Application is considerably higher than that of an Application based on a One Month Notice, I do not find that the Landlord has met this burden by satisfying the elevated threshold of an early end of tenancy Application.

However, I strongly caution the Tenant that he is on formal notice that any continued, escalated behaviours or actions that are unacceptable or inappropriate, may jeopardize his tenancy.

As the onus is on the Landlord to prove these claims, under the circumstances described, I find that the Landlord has provided insufficient evidence to warrant ending this tenancy early based on this type of Application. Consequently, I find that the Landlord is not entitled to an Order of Possession, and I dismiss this Application in its entirety.

As the Landlord was unsuccessful in his Application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, I dismiss the Landlord's Application without leave to reapply.

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: September 8, 2020

Residential Tenancy Branch