



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: ET

Introduction

In this dispute, the landlord seeks an order to end the tenancy, and an order of possession, pursuant to section 56 of the *Residential Tenancy Act* (the "Act").

The landlord filed an application for dispute resolution on September 3, 2020 and a dispute resolution hearing was held on September 25, 2020. The landlord's agent (the "landlord"), the tenant, a friend for the tenant, and the tenant's mother attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issue of this application.

Issue

Is the landlord entitled to an order under section 56 of the Act?

Background and Evidence

By way of background, the tenancy began on January 6, 2017 and monthly rent is \$375.00. The tenant paid a security deposit of \$187.50. A copy of the written tenancy agreement was submitted into evidence.

The landlord gave evidence that the reason they are seeking an order under section 56 of the Act is because of an incident that occurred on September 2, 2020, in which the following occurred:

September 2nd 2020 VPD was called to [address of rental unit] Street as tenant was threatening and wielding a weapon at staff. Tenant refused to co-operate

with Police and staff. He threatened harm on VPD officers, and staff, VPD used taser and rubber bullets in defense. Tenant poses a risk to the property, to staff, as well as the other 100 residents in this building. Tenant has also damaged suite, vandalized cameras in the building and is a continued threat to the safety of everyone.

The landlord gave testimony about the incident, a statement (and incident report) was submitted into evidence which largely mirrored the landlord's testimony. I shall reproduce that statement below, as it clearly describes the incident in greater detail (spelling errors corrected for brevity and clarity):

At 11:00 am [L] went to notify [the tenant] that ACT was on the 2nd floor to see him. When [the tenant] opened the door he was holding a butcher knife and said he was going to stab anyone who came near him. Officer [K] was with Dr [name redacted] and [L] told them what just happened Officer [K] called for back up. 5 officers came and told [the tenant] that he needed to go to the hospital and they asked that he come out of his room. [The tenant] at that point told the officers that if they tried to get him out it would end in a blood bath, at that point those officers called for more back up and 14 officers came with a negotiator and set up a tactical room next door in room 217 which was not rented The police got a warrant and handed it to [the tenant] and [the tenant] lit the warrant on fire, The police called the fire department to the building as a precaution. The police tried for several hours to talk [the tenant] out without success. At that point they asked me [the landlord] to try and negotiate with [the tenant] after no response they decided to go in to [the tenant]'s room [the tenant] was on his bed and when officers went in he came at them with the knife they shot him with rubber bullets and tazed him. The police arrested [the tenant] and removed the tazer equipment from his chest and called an Ambulance to have him checked out before moving him to [name redacted] Hospital

The landlord, who has been the landlord (or building manager) of the property for over a year, has also been a support worker for over 20 years. She well understands the issues of tenants in the type of property he is in and was wholly sympathetic and empathetic to the tenant's various health issues. Indeed, she remarked that "I like [him]." Notwithstanding all of that, however, she pointed out that her responsibility as a landlord is to run the building as best she can, and part of that responsibility is ensuring the safety, security and well-being of the other occupants of the building. "I have to put the tenants' safety first," she remarked. "Basically, I just can't have staff threatened," the landlord added.

The tenant briefly testified, explaining that “my psychiatrist has been playing around with my medication for a little bit now.” Further, “I think [when] my medication changes, it affects my mental well-being.” The tenant provided a written submission into evidence, which references the medication issues. He also refers to the incident occurring because, as explained in the written submission:

I felt threatened by a random un-invited, un-appointed intrusion into my home, by these men from the Act team, insisting and forcing themselves upon me to go with them of which I refuted. I felt very violated and threatened by the men trying to force their way into my home. They were trying to force their way into my window or coax me out to their plan. They continued to badger me for quite some time.

The tenant’s friend R.J. spoke briefly about the tenant and his well-being, and remarked that the tenant generally keeps his room very tidy and that the room provides the tenant with a base home to live in. He also reiterated the tenant’s argument that the issue involving the knife was indicative of someone trying to defend themselves. And, that this behavior is more akin to someone protecting his home and trying to prevent a forced entry.

The tenant’s mother also spoke in support of her son and lamented the lack of prompt care from the health team (which ultimately came to the tenant’s rental unit on September 2, 2020).

Analysis

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.

Section 56 (1) of the Act permits a landlord to make an application for dispute resolution to request an order (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit.

In order for me to grant an order under section 56 (1), I must be satisfied that

- (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
 - (iii) put the landlord's property at significant risk;
 - (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlord's property,
 - (B) 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, or
 - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
 - (v) caused extraordinary damage to the residential property, and
- (b) it would be unreasonable, or unfair to the landlord 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.

In this case, there is no evidence that the police had the authority to force entry into the tenant's rental unit. While I am not unappreciative of the health care team's role and responsibility in relation to caring for the tenant, much of what occurred on September 2, 2020 was brought on by the actions of the police. Moreover, none of the grounds under section 56 of the Act relate to seriously jeopardizing the health or safety of third parties who are not tenants. In other words, the bulk of the tenant's threats were directed at the police and the mental health workers, who are not captured by section 56 of the Act. This is, of course, not to lay criticism at either the police or the health workers, but rather, to simply stress that much of the incident actually fell outside the gambit of section 56.

However, the specific incident of "When [the tenant] opened the door [to the landlord's employee] he was holding a butcher knife and said he was going to stab anyone who came near him" is particularly concerning, and is, I find, an instance of the tenant's seriously jeopardizing the health or safety or a lawful right or interest of the landlord or another occupant.

And, as the landlord persuasively argued, while she is not unsympathetic to the tenant's plight, safety of others in the building is a priority and that she "just can't have staff threatened" with a butcher's knife. Further, I find that it would be unreasonable and unfair to the landlord and the other occupants (who are, the landlord said, scared to go near the rental unit) to wait for a notice to end the tenancy under section 47 of the Act.

Taking into very careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the application for an order under section 56 of the Act.

Conclusion

Pursuant to section 56(1) of the Act, I hereby

1. end the tenancy effective September 27, 2020, and
2. grant the landlord an order of possession in respect of the rental unit.

The order of possession is issued in conjunction with this decision, and the order must be served by the landlord on the tenant. The order of possession is effective two (2) days from the date of service, and it may, if necessary, be filed in and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: September 25, 2020

Residential Tenancy Branch