



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ET, FFL

Introduction

In this dispute, the landlord seeks orders under section 56 of the *Residential Tenancy Act* (the “Act”). In addition, the landlord seeks to recover the application filing fee pursuant to section 72 of the Act.

The landlord filed an application for dispute resolution on October 3, 2020 and a dispute resolution hearing was held on October 13, 2020. The landlord and his son attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. Absent from the hearing were the tenants, who the landlord remarked were heard swearing about five to ten minutes before the hearing.

The landlord testified that he served the Notice of Dispute Resolution Proceeding package on the tenants in-person on October 7, 2020. A copy of the proof of service documents were submitted into evidence. Based on this undisputed testimony and documentary evidence I find that the tenants were served in compliance with the Act and with the *Rules of Procedure*.

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 issues of this application.

Issues

1. Is the landlord entitled to an order under section 56 of the Act?
2. Is the landlord entitled to recovery of the filing fee under section 72 of the Act?

Background and Evidence

The tenancy in this dispute began on September 1, 2020. Monthly rent is \$1,650.00 and the tenants paid a security deposit of \$825.00, which the landlord currently holds in trust pending the outcome of this application. A copy of a written tenancy agreement was not provided into evidence.

On October 3, 2020 the landlord filed an application for an order under section 56 of the Act, under which the tenancy can be ended early and an order of possession may be obtained by the landlord. The reason why the landlord brought this application is because, as stated in his application and confirmed during the hearing, as follows:

Tenant threatened my me, my son and my nephew that he would "break all three of you" he said he "will take all three of us on" "he is a collective hells angels" "I would kill you if you were my kid" "I'd fucking knock you right out" " I will shut him right the fuck up".

Submitted into evidence is a copy of text message conversation between one of the tenants and the landlord, along with a video in which the parties interact at the door of the rental unit. The text message from one of the tenants, dated October 2, 2020 at 3:52 and 3:53 PM, to the landlord, reads as follows (formatted for brevity):

Your dumbass fat fucking kid tells me to shut up one more time, I will shut him right the fuck up

You do yourself a huge favour and try to ac-commodate the paying tenant or I will deal with you also

In the video, one of the tenants can be heard threatening to cause personal injury on the landlord and his son. In the video, the tenant refers to himself as a "collective Hells Angel."

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.

1. Application for Order under section 56 of the Act

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) of the Act, 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, one or both of the tenants threatened to harm both the landlord and his son. The messaging is clear, and there is no doubt in my mind that the tenants' threat was both serious and intended to be taken seriously. There is, quite frankly, nothing for me to find that the message was meant as a joke or to be taken lightly.

Section 264.1(1)(a) of the *Criminal Code* states that

Every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat (a) to cause death or bodily harm to any person;

As a former Crown prosecutor, I have extensive experience in cases involving threats, assault, and similar types of offense. And, based on the undisputed evidence of the landlord, I find that that the tenants' threats to cause bodily harm to the landlord and to the landlord's son are an illegal activity that has adversely affected the quiet enjoyment, security, safety and physical well-being of the landlord and his son. Further, given the grave nature of the threats, comprising both the text message and the oral threats made on October 2, 2020, I conclude that it would be unreasonable and unfair to the landlord to have to wait for a notice to end the tenancy under section 47 of the Act.

Taking into 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 their application for an order under section 56 of the Act.

Therefore, pursuant to section 56 of the Act, I order that the tenancy is ended effective as of today's date. Further, I grant the landlord an order of possession, which must be served on the tenants. Upon service, the order of possession shall go into effect two days hence. The order of possession is issued to the landlord in conjunction with this Decision.

2. Claim for Recovery of the Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant his claim for reimbursement of the \$100.00 filing fee.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, as the tenancy has ended, I order that the landlord may retain \$100.00 of the tenants' security deposit in satisfaction of the above-noted award.

The remainder of the tenants' security deposit must, however, be dealt with by the landlord in accordance with [section 38](#) of the Act.

Conclusion

I hereby order that the tenancy is ended effective October 13, 2020, pursuant to section 56 of the Act.

I hereby grant the landlord an order of possession, which must be served on the tenants and which is effective two (2) days from the date of service. This order may 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) Act.

Dated: October 13, 2020

Residential Tenancy Branch