



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacifica Housing Advisory Association and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order for early termination of a tenancy, pursuant to section 56; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing. The tenant was assisted by advocate AM and counsel LC. The landlord was represented by managers SF, ST and KO. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Issues to be Decided

Is the landlord entitled to:

1. an order for early termination of a tenancy?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained

rule 7.4 to the attending parties; it is their obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on July 01, 2013. Monthly rent in the amount of \$435.00 is due on the first day of the month. The landlord collected and holds the security deposit of \$369.00. The tenancy agreement was submitted into evidence.

The landlord said on July 23, 2020 the tenant chased and threatened another tenant with a baseball bat in the rental building. Both the tenant and his advocate affirmed the tenant was confronted by other tenants when he was under the influence of alcohol and denied the tenant was holding a baseball bat.

The landlord stated on September 18, 2020 the respondent tenant was confronted by two other tenants. The respondent tenant physically assaulted both tenants and one was taken to the hospital with a broken nose and black eye. The physical assault happened in the hallway by the tenant's rental unit and the landlord saw blood spots on the floor. The police are investigating this incident. The tenant said he was under the influence of alcohol during this incident and he does not remember the incident.

Both parties agreed after the September 18, 2020 incident the tenant was not in the rental building since the incident until at least October 07, 2020 and the tenant has been sober ever since.

A warning letter from the landlord to the tenant on October 07, 2020 was submitted into evidence. It states:

Our office has become aware of a violent altercation that occurred between you and other [anonymized] tenants on [anonymized] property on September 18, 2020 around 7:30 pm. It was reported that you engaged in physical violence with these tenants. Pacifica Housing takes violent behaviour very seriously and this is not permitted within our support programs or on our properties.

[...]

Pending the results of our investigation of this incident with the police, Pacifica may choose to terminate your tenancy.

The landlord also submitted into evidence staff members emails about the September 18, 2020 incident. The landlord obtained a file number from the police. The landlord stated the police requested a warrant to be issued against the tenant. On October 09, 2020, when this application was submitted, the warrant had not been issued. The tenant said the police informed him on October 20, 2020 there is no outstanding warrant or court order against him.

Heavily redacted reports about the incidents issued by the landlord were submitted into evidence. The landlord affirmed the victim tenants did not authorize the landlord to submit photographs of their body injuries and refused to participate in the hearing as witnesses or to provide written testimonies because they are afraid the respondent tenant may assault them again.

The tenant's advocate argued the reports submitted into evidence are not direct testimony from the parties involved in the incidents and are not enough evidence to allow the tenancy to be terminated under section 56 of the act. The landlord explained the reports were created based on the testimony given by the victim tenants to the landlord's staff.

The landlord affirmed she contacted the Residential Tenancy Branch on October 09, 2020 and was informed the hearing wait time for applications to dispute a notice to end tenancy was three months. The landlord concluded because of the tenant's violence he seriously jeopardized the safety of other occupants and it would be unreasonable to wait for a notice to end tenancy under section 47 of the Act. The application was not submitted earlier because the landlord and the police are investigating the incident and the tenant was not in the rental building until October 07, 2020.

The tenant stated there were only three incidents in a 7 year-tenancy, it is unfair to grant an early tenancy termination, he has been struggling with alcohol addiction his entire life and if his tenancy is terminated he will be homeless and heavily consume alcohol again.

Analysis

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, the reasons to end the tenancy early. This means that the landlord must prove, more likely than not, that the facts stated on the application happened and it would be unreasonable, or unfair to the landlord or other tenants, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

Section 56 (2) of the Act states:

(2)The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(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.

Residential Tenancy Branch Policy Guideline 51 states:

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).

Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

(emphasis added)

Based on the landlord's convincing and detailed testimony provided by two representatives, the warning letter and the tenant's testimony not recalling if the physical assault happened or not, I believe the tenant physically assaulted two tenants on September 18, 2020. I find that pursuant to section 56(2)(a)(ii) of the Act, the tenant's behaviour seriously jeopardized the health and safety of other tenants.

If the landlord issued a notice for cause under section 47 of the Act, the landlord could not end the tenancy earlier than one month after the date the notice is received by the tenant and possibly the landlord would wait up to three months if the tenant disputed the notice. I find that pursuant to section 56(2)(b), it would be unreasonable for the landlord to wait to end the tenancy by issuing a notice for cause.

I grant an order of possession effective two days after service on the tenant, pursuant to section 56(2)(a)(ii) of the Act.

As the landlord is successful in this application, the landlord is entitled to recover the filing fee.

Conclusion

I grant an order of possession to the landlord effective **two days after service of this order**. Should the tenant fail to comply with this order, this order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 72(2)(b), the landlord is authorized to deduct \$100.00 from the security deposit to recover the filing fee.

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: November 16, 2020

Residential Tenancy Branch