



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an early termination of the tenancy and an order of possession, because he says the Tenants pose an immediate and severe risk to the Landlord and residential property. The Landlord also applied to recover the \$100.00 cost of his Application filing fee.

The Tenants, the Landlord, and an advocate for the Landlord, G.C. ("Advocate"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. Three witnesses, one for the Tenants, D.M., and two for the Landlord, P.M. and R.S., were also present and available to provide affirmed testimony.

During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenants acknowledged receipt of the Landlord's Application, Notice of Hearing, and evidence, as the Advocate said that he and the Landlord posted it on the rental unit door on December 8, 2020.

The Tenants said that they posted their evidentiary submissions on the Landlord's door well before Christmas, although they did not immediately recall the date. Later in the hearing, the Tenants said they posted their evidence on the Landlord's door on October 5, 2020. They said they also took a photograph of it, although that photograph is not in evidence before me. However, as the Landlord had not yet served the Tenants with the Notice of Hearing for this proceeding until December 8, 2020, I find that the Tenants must have been referring to another hearing between the Parties for that service of their evidence. Based on the evidence before me overall in this matter, I find that the Tenants

failed to serve the Landlord with their evidentiary submissions for this proceeding; therefore, to be administratively fair to the Landlord, I decline to consider the Tenants' evidence submitted to the RTB in this matter. However, I will consider their testimony from the hearing.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in his Application, and the Parties confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession based on the early termination of the tenancy pursuant to section 56 of the Act?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on April 1, 2020, with a monthly rent of \$1,600.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$800.00 and no pet damage deposit.

In the hearing, the Advocate said:

[The Landlord] is living in his own home by himself. He decided to rent out the basement suite, and in came these Tenants last April. [The Landlord] has been assaulted on more than one occasion by the Tenants. He went to the hospital on the first occasion, but there were no witnesses. On the second incident on November 7, [the Tenant's] son came out and pushed the [Landlord] and his friend.

In the paper work, we have a letter signed by [the Landlord] and three of his friends who witnessed the assault. Every time there is an interaction, it is stressful and leads to confrontation. The Tenants are subjecting [the Landlord] to

elder abuse. They don't pay their rent; they physically assault him. Some incidents were witnessed, and some were not.

There are threats here all the time. Police are here all the time. [The Landlord] was denied a chance to look at his property. There is stuff piled all over, door locks changed, and he's not allowed to view the property when he comes to inspect. On December 21st he served the Tenants with a 24-hour notice to see the unit, but he was denied access.

The police came and two City bylaw officers, but they know about the threats and physical assaults. They know the Tenants by their first names and there's a history here. [The Landlord] is living in fear in his house at all times. The Tenant's son yells at him and . . . they're taking advantage of [the Landlord] as an elder. The city keeps fining [the Landlord] for the unsightly trailer on his property – the Tenants' trailer. There is garbage all over, the suite is damaged, the whole neighbourhood is afraid of these people. This is one of those problem houses. The Tenants lie and say they are not doing anything.

The Tenants said:

They tried to claim assault in the first hearing. I have two cameras set up in the driveway – there's no proof of him going to the hospital. I sent video of him yelling at me when I was in my truck. I have never been charged with any assaults. The RCMP haven't been here to talk to me about assaults.

[The Landlord] only accepts cash. I've been asking for the lease or tenancy agreement and receipts, but he doesn't provide any. We have to boil water to have a shower. Our oven doesn't work; there's no smoke detectors. I'm under continuous harassment from [the Landlord]. Yes, my trailer is chained, because he had my truck towed. I lost my job. We can't even go outside and be peaceful.

I've recorded all about the garage. There were containers of human feces, rats, garbage, I uploaded all of that. This started over our shower being broken, and he refuses to fix and says it's our fault.

The Tenant, K.P., said:

One incident when [S.R.] was at work, [the Landlord] came down to the suite about some minor issue, but I could tell that he wasn't sober. He was drunk and

yelling and screaming at me over rent. He wouldn't let me speak; he talked over me, and at that point I closed the door and walked away. This is not the first time he has been drunk and yelling at us.

The Landlord said:

English is a second language for me, so I brought [the Advocate] to help. They are 100% lying. They paid rent in April and May and after that nothing. They make my life miserable. I've been to hospital three or four times. I take blood pressure medication. Please . . . he brought his son, too; my life is miserable. I might have a heart attack or die. This is the first time I've seen this type of person in a rental property. I never had a problem like this before. It's the first time I filed for a hearing. I'm so upset, I can't talk so much. Please evict him as soon as possible.

The Advocate said:

[The Landlord] heard pounding from the apartment and thought they were trying to break into his house. The next day the police were willing to come and observe the inspection, because of the history here. I have a photo of that day with the police. [The Tenant] said the police never come. Why would they come to a basic inspection as a witness? I watched [S.R.] say I'm not going to let him look at my property, because [someone] was having a bath. That was a lie to the police and bylaw inspectors. He also said the bathtub was broken, so why was someone in the bath at the time of a scheduled inspection, so it's just another lie.

The damage to the property is also considered under the emergency removal section. The yard is covered with stuff. The whole property is filled with fire hazards. [The Landlord] has paid at least \$1,000.00 in fines for the fire hazard. There's a letter to [S.R.] from the City to move the trailer, so he unhitched it, flattened the tires... so that it couldn't be moved. [The Landlord] first rented the place to [S.R.], who moved in, and now the adult son is there, and there are other people in the trailer. There are friends here all the time. It goes on and on.

The Tenants said:

We have a video of September 17 - there is no altercation. [The Landlord] is threatening to kill me. I sit in my truck when he yells and screams at me. There has never been an assault, or I would be arrested.

The illegal suite in the back - I promised to clean it out, if he would leave me alone. [The Landlord] didn't get a garbage bin for two days. I took pictures and videos of what was in there - human feces, syringes.... I said I would do it for him, but he wanted a price from me, and I said \$250.00. He's constantly yelling and threatening me. . . .

The banging that time – we were trying to kill a rat. Two RCMP officers came that time and left. They told [the Landlord] to stop calling them.

I took the air out of the trailer tires, because he towed my truck. Now I have to take lug nuts out of my truck every night, so he won't tow it. He had two people living there in the back unit - drug addicts; she had her drug dealer knocking on our door, looking in our window – there's no privacy.

I'm the one who has recorded all the footage where he comes out and yells at me. I said you can't lie to the arbitrator; I could lose my kids for good. What am I getting out of assaulting a 68-year-old gentleman, who I know is going to call the RCMP? There's never been a single thing like that. This all started because we asked him to fix the shower in August; it's still broken. Our stove is broken, too. He won't fix anything. He refuses. But he asked me to clean out his gutters and help him when he was stuck out of his truck, which I did.

I asked the Landlord why it would be unreasonable or unfair to him or other occupants of the residential property to wait for a one month notice to end the tenancy to take effect?

The Advocate said:

That notice was served, and they hadn't replied to it. That was for three months with no rent. They have been served with a 10-day notice, and a 30 day notice, and they haven't responded to either. We don't want to wait for those other notices. I'm worried that someone is going to get hurt; I'm afraid it's going to escalate. The police know these guys by their first names. There's a photo I uploaded that shows the police talking at [S.R.'S] door.

The Landlord said:

The City Bylaw are coming for [S.R.'S] trailer. I'll probably get a \$10,000.00 bill. The City is waiting for this hearing to end and then they are going to remove the

stuff. Next week they're coming. They don't need someone's permission; they're going to move it.

In his written summary, the Landlord said:

The Tenants have a history of threatening and physically assaulting the landlord and his guests. This has been escalating. On November 17, 2020 [S.R.'s son] pushed the landlord [R.P.] and his friend [S.N.]. RCMP Constable [M.] opened a file [police file no.]. On November 30, 2020, again the police were called after the tenant pushed [the Landlord] on his own property file [police file no.]. On December 1, 2020 the tenants were aggressive and threatening again to [the Landlord], because the City had called to come and inspect the trailer to see if he has complied with putting air in the tires and making it movable.

The tenants continue to cause significant damage to both the interior and exterior of the rental property. [City] Bylaw officers continue to assess the landlord with fines and penalties due to the personal possessions of the tenant and the state of the property. [City] fire department has issued safety violations upon the property due to the actions of the tenants. Costs of these violations and the clean up continues to be put on the landlord. Rent has not been paid for several months. The tenant is taking advantage of a senior citizen knowing he does not have the ability to defend or protect himself and his property. The actions he takes are deliberate and a mockery of the systems in place.

...

On December 1, 2020, the RCMP, Fire Department and City Bylaw officers all came together to the property at 2pm. The tenant continued to lie to them about his plans to clean up his mess and remove the trailer and other unsafe items.

The Landlord then listed a number of exhibits that he had attached with evidence supporting these claims. These included a City bylaw letter for unsightly property dated September 14, 2020. It included a Fire Department Order addressed to the Tenant and dated September 15, 2020, which states:

I, [A.M.], being the Fire Chief or a Fire Prevention Officer with the [City] Fire Rescue Department

FIND THAT: Due to the maintenance of the premises being in such a state of disrepair that a fire starting in them might spread rapidly to endanger life or

property, and to allow flammable conditions to exist on the premises so as to endanger life or property and that the owner is using or occupying the Premises in such a manner that fire would endanger life or property and increase the danger of fire.

THEREFORE, pursuant to the authority vested in me and under the "*Fire Protection and Life Safety Regulation Bylaw No. 7108*" you are HEREBY ORDERED TO:

1. Remove Excess combustible material from the immediate exterior and interior of the premises and maintain good housekeeping.
2. Have a qualified electrician repair hard-wired, inter-connected smoke alarms.

...

The Landlord also included a letter dated September 18, 2020, from J.B. and K.B., who identified themselves as neighbours of the Landlord. This letter included the following:

Ever since the tenants moved into the basement suite of the residence at [residential property address] where [the Landlord] (homeowner) resides, they have created chaos and disruption to the peace and quiet and safety of the nearby neighbors for well over 5 months. It seems more junk and stuff starts to appear weekly in [the Landlord's] driveway and yard, including a dilapidated old travel trailer that is now parked in his driveway with all sorts of items propped up against the trailer creating quite a mess and eyesore. There is concern that there are night time visitors to this trailer where one or more of the tenants may be living part time.

We reside across the street from [the Landlord's] residence and have heard many verbal arguments on numerous occasions. We had seen a utility trailer parked on [residential property road] and loaded with junk sitting in front of [the Landlord's] residence for close to a month. This is illegal as vehicles can not park for more than 24 hours on the road at a time which is the bylaw. When the trailer was finally towed by the police who attended [the Landlord's] residence to determine who the trailer belonged to, the tenant got up in arms and a week later accused us of calling the police. We had no contact with the police about this trailer with all the junk in it sitting on the side of [residential property road] and the tenant wrongfully accused us of calling the police.

The tenant wrote quite a nasty and threatening letter and taped it to the tree at the beginning of our driveway. The RCMP and Bylaws travel down [the residential property road] regularly and were keeping an eye on it and made some earlier inquiries within the neighbourhood to learn more about the situation, but they never contacted us, so we were never involved. We never followed up with the police about his threatening letter because we didn't want to see the situation escalate. We have saved the note for future reference if it is required.

There have been several visits by the RCMP and City Bylaws to this residence lately causing further uneasiness about what's going on with these tenants. So for the sake of our safety and peace and quiet of neighbors in our neighborhood, we wish to see these tenants evicted as soon as possible. We moved here to this beautiful, peaceful, safe neighborhood 27 years ago and we'd like to have peace of mind that things will return to normal once these tenants have moved out.

If you require further info, please contact us at [telephone number]. Thank you for hearing our concerns.

Signature
[J.B.]

Signature
[K.B.]

The Tenants said:

They're full of it. This whole thing is ridiculous. All the garbage is all the stuff I pulled out of the illegal suite. I took pictures. The gentleman in the back had no way of washing anything. He had totes that are all left here. There was moldy wood outside our door – I loaded it into the bin. I've been dealing with my stuff – it's already dealt with. The remainder all belongs to the old tenant who moved out 3 – 4 weeks ago, because the suite is illegal and disgusting. To allow a tenant to live like that shows how [the Landlord] has people living.

They assaulted me and I turned it over to the police, and that's why the police know me by name. Mostly [the Landlord] feels like calling the cops on me – once a week they call and complain about something. Both of us have clean records – I've never been to jail. I'm so upset about this whole thing.

He's out the \$750.00 from the illegal suite. He wants to get us out of here, too, so he can rent this and the illegal suite again.

I'm trying to do anything possible to get my kids. And this can have serious repercussions. I'm going to call the police again about the false accusations.

The whole thing with the bylaw is because of the continuous garbage from his previous tenant. We uploaded evidence to show that stuff.

When we first moved in there, we took pictures of the way it was. I'm Mr. Fix it anyway, because he won't fix anything. There's nothing no damage, we've documented everything. I've worked from people who've worked for [the Landlord] in the past, and they said be sure to document everything.

I'm just upset about these assault claims, because I've never assaulted anyone in my life. We would like our receipts and rental agreements, and every month he refuses and then comes down and asks me for help. I'm a nice person; I don't go around doing things. I recently cleaned the gutters and helped him in his truck when he was locked out. I would like him to fix the shower and oven.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Under section 56 of the Act, the director may end a tenancy and issue an order of possession only if satisfied, in the case of a landlord's application, the tenant or a person permitted on the residential property by 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 interest 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,
- 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
- 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 or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 to take effect.

In this case, I find that the Landlord has established on a balance of probabilities that the Tenants did the second and third actions in the above noted list. Given the testimony of the Landlord and the Advocate, the evidence from the Landlord's neighbours across the street, and the fines and complaints of the City and the fire department, I find that the Landlord has provided sufficient evidence to prove his case on a balance of probabilities. I find that there is sufficient evidence before me to establish grounds to end the tenancy early under section 56 of the Act. I accept the Landlord's evidence that the Tenant or someone he has allowed on the property has seriously jeopardized the health or safety or a lawful right or interest of the Landlord, and put the Landlord's property at significant risk. I also find that it would be unreasonable or unfair to the Landlord to require him to wait any longer for the end of the tenancy, pursuant to section 47 of the Act.

Accordingly, and pursuant to section 56 of the Act, I Order that the **tenancy is ended two days** from the date on which the Order of Possession is served on the Tenants. I grant the Landlord an Order of Possession, which must be served on the Tenants and which is effective two days after the date of service. Further, I grant the Landlord recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act, and I authorize the Landlord to deduct this from the Tenants' security deposit.

Conclusion

The Landlord's Application is successful. The Landlord provided sufficient evidence to establish the grounds required under section 56 of the Act to end the tenancy early. The Landlord is also awarded the \$100.00 Application filing fee, and authorized to deduct this from the Tenants' security deposit in full satisfaction with the award.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible.

Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, 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: January 08, 2021

Residential Tenancy Branch