



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlords under the Residential Tenancy Act (the Act), seeking an order ending the tenancy early pursuant to section 56 of the Act.

The hearing was convened by telephone conference call and was attended by one of the Landlords (the Landlord) and an agent for the Landlord (the Agent), both of whom provided affirmed testimony. Neither the Tenant nor an agent acting on their behalf attended. The Landlord and Agent were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application, Notice of Hearing, and documentary evidence to be relied on by the Applicants at the hearing. As the neither the Tenant nor an agent acting on their behalf attend the hearing, I confirmed service of these documents as explained below.

The Landlord and Agent testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, the Notice of Hearing, and all the documentary evidence before me from the Landlord, was posted to the door of the rental unit on January 18, 2021, the same day they received the Notice of Dispute Resolution Proceeding from the Branch by email. A witnessed and signed proof of service document was submitted confirming service as set out above, and several photographs were submitted showing the Notice of Dispute Resolution Proceeding posted to a door. As a result of the above, I am satisfied that the documentary evidence before me and the Notice of Dispute Resolution Proceeding, including a copy of the

Application and the Notice of Hearing, were posted to the door of the rental unit on January 18, 2021.

The Agent and Landlord stated that the Tenant received the above noted documents from their door the following day, on January 19, 2021, and that they have a video showing this. A copy of this video was not submitted for my review and consideration as it was taken after the date the Application was filed and rule 10.2 of the Rules of Procedure states that an applicant must submit all evidence that they intend to rely on at the hearing with the Application for Dispute Resolution. However, rule 3.17 of the Rules of Procedure states that evidence not provided to the other party and the Residential Tenancy Branch (the Branch) directly or through a Service BC Office in accordance with the Act or Rules of Procedure may be considered if the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

As the video showing the Tenant receiving the Notice of Dispute Resolution Proceeding package and evidence did not exist at the time the Application was filed, as the filing of the Application is a pre-requisite for service of the Notice of Dispute Resolution proceeding, I find that the Landlord could not possibly have submitted this evidence at the time the Application was filed and I therefore find that it qualifies as new and relevant evidence. I therefore permitted the Landlord to submit a copy of the video for my review by 11:59 P.M. on the date of the hearing and advised them that if it was not received within that timeframe, I would render my decision without consideration of it.

The Landlord did not submit a copy of the above noted video as requested. I have therefore rendered this decision without consideration of it. Based on the undisputed documentary evidence and testimony before me on behalf of the Landlord, and in the absence of any evidence to the contrary, I find that the Tenant was served with the above noted documents on January 19, 2021, the day then Landlord stated that they received them off their door. As a result of the above, and as neither the Tenant nor an agent acting on their behalf attended the hearing to present any arguments regarding service or exclusion of evidence, I therefore accepted all of the documentary evidence before me from the Landlords at the time of the hearing, for consideration.

Although the Landlord and Agent stated that they suspect the Tenant has not attended the hearing as they believe they were incarcerated several days after the Notice of Dispute Resolution Proceeding and evidence was received by them, they wish for the hearing to proceed as scheduled as the Tenant was aware of the date and time of the hearing prior to their incarceration and could have appointed an agent to attend on their

behalf as allowable under the Rules of Procedure. They also stated that the Tenant's partner could have attended the hearing on their behalf, as they reside in the rental unit with the Tenant and were also aware of the Application and hearing.

I accept the undisputed and affirmed testimony of the Landlord and Agent that if the Tenant was incarcerated, they were incarcerated after they received the Notice of Dispute Resolution Proceeding and their partner, who also resides in the rental unit, was aware of the Application and hearing. As I am satisfied that the Tenant was served with the Notice of Dispute Resolution Proceeding on January 19, 2021, as required by the Act and the Rules of Procedure, and there is no evidence before me from the Tenant about why they did not attend the hearing or appoint an agent to attend the hearing on their behalf, the hearing therefore proceeded as scheduled despite the absence of the Tenant or an agent acting on their behalf, pursuant to rule 7.3 of the Rules of Procedure.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision. At the request of the Landlord, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail address provided in the Application.

Issue(s) to be Decided

Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the Act?

Background and Evidence

The Landlord and Agent stated that there is only a verbal tenancy agreement in place with the Tenant, who rents one of two rental units located in the same home where the Landlords and their family members reside. The Landlord and Agent stated that the month to month tenancy commenced at the end of October 2020 or the start of November 2020, and that rent in the amount of \$1,500.00 is due on the last day of each month. They also stated that a security deposit in the amount of \$500.00 was paid by the Tenant, the entire amount of which is still held in trust by the Landlords. The Landlord and Agent stated that on January 10, 2021, the Tenant assaulted the Landlord and the Landlord's son, and that a restraining order was therefore granted against the Tenant the same day. The Landlord and Agent stated that since the restraining order was granted, the Tenant has breached the conditions of it on three to four occasions,

resulting in their subsequent arrest and incarceration on approximately January 21, 2021.

The Landlord and Agent stated that in addition to the assault and subsequent breaches of the restraining order, the police have had to attend the rental unit several other times in the last month with regards to the utterance of threats and disturbances caused by the Tenant to the Landlords, the Landlord's family, and the occupants of another rental unit on the residential property. The Landlord and Agent provided me with six police file numbers, which I have recorded on the cover page of this decision, for incidents on January 6, 2021, January 10, 2021, January 16, 2021, and January 18, 2021.

Given the significant safety risk posed to the Landlord, the Landlord's family members, and the other occupants of the residential property by the Tenant's aggressive behaviour and threats, and the significant and unreasonable level of disturbance caused by the frequency and intensity of the police incidents involving the Tenant at the property, the Landlord and Agent argued that it would therefore be unreasonable and unfair to the Landlords and the other occupants of the residential property, including other tenants of the Landlords, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

In addition to the police file numbers given during the hearing, the Landlords also submitted photographs of an injury sustained during the assault by the Tenant, two videos of the Tenant causing disturbances on the residential property, and a copy of an RCMP business card, in support of their section 56 Application.

Although I am satisfied that the Tenant was served with the Notice of Dispute Resolution Proceeding, including a copy of the Application and the Notice of Hearing, on January 19, 2021, neither the Tenant nor an agent acting on their behalf appeared at the hearing to present any testimony or documentary evidence for my consideration.

Analysis

Section 56 of the Act states the following with regards to ending a tenancy early:

Application for order ending tenancy early

56 (1) A landlord may 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 [*landlord's notice: cause*], and
 - (b) granting the landlord an order of possession in respect of the rental unit.
- (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.
- (3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

Based on the documentary evidence before me and the undisputed and affirmed testimony of the Landlord and Agent at the hearing, as set out above, I am satisfied on a balance of probabilities that the Landlords have cause to end the tenancy early pursuant to section 56 of the Act because the Tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the Landlords of the residential property;
- seriously jeopardized the health or safety or a lawful right or interest of the Landlords or another occupant;
- engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property; and
- engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the Landlords.

I am also satisfied that it would be unreasonable or unfair to the Landlords and other occupants of the residential property, due to the health and safety risk posed by the Tenant, to wait for a notice to end tenancy under section 47 to take effect.

Based on the above and pursuant to section 56 of the Act, I therefore grant the Landlords an Order of Possession for the rental unit effective two days after service of the order on the Tenant.

As the Landlord was successful in their Application, I grant them \$100.00 for recovery of the filing fee pursuant to section 72(1) of the Act. Pursuant to section 72(2)(b) of the Act, the Landlord is permitted to withhold \$100.00 from the Tenant's \$500.00 security deposit in recovery of this amount, the balance of which is to be dealt with by the Landlord in accordance with the Act.

Conclusion

Pursuant to section 56 of the Act, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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. The Tenant is cautioned that costs of such enforcement are recoverable from the Landlords.

The Landlord is permitted to retain \$100.00 from the Tenant's security deposit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 2, 2021

Residential Tenancy Branch