



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

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.

I left the teleconference connection open until 9:58 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord's agent JR (the landlord) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenant was served with the evidence by registered mail on January 20, 2021, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision). The application was attached on the tenant's rental unit front door on January 22, 2021, in accordance with section 89(2)(d) of the Act. A witnessed proof of service (RTB form 9) was submitted into evidence.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed and on the 3rd day after it is attached to a door. Given the evidence of registered mail and attaching the application on the tenant's rental unit front door, the tenant is deemed to have received the evidence and the application on January 25, 2021, in accordance with section 90(a) and (c) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – Landlord's name

The landlord explained the named landlord JR is the agent for the landlord, City of Vancouver. Rule of Procedure 4.2 allows the application to be amended at the hearing. As the tenancy agreement states the name of the landlord to be the City of Vancouver, I think the respondent could have reasonably anticipated that decision resulting from this hearing would name the City of Vancouver.

Pursuant to section 64(3)(c) I have amended the name of the applicant landlord.

Issue to be Decided

Is the landlord entitled to an order for early termination of a tenancy?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below. I explained rule 7.4 to the attending party; it is his obligation to present the evidence to substantiate the application.

The landlord stated the periodic tenancy started on July 10, 2020. Monthly rent in the amount of \$375.00 is due on the first day of the month. The landlord collected and holds the security deposit of \$187.00. The tenancy agreement was submitted into evidence.

The landlord affirmed on January 15, 2021 the landlord's agent JB asked the tenant about loud noises in his rental unit. The tenant yelled at and physically assaulted JB in the hallway in front of the tenant's rental unit. The tenant punched JB in the throat at 9:05 P.M.

The landlord submitted into evidence an incident report. It states: "[tenant] appear on main floor and verbally confronts JB, during this brief encounter and without provocation [tenant] strikes staff in the neck/throat." Images showing the assault captured by the surveillance camera were submitted into evidence.

The police arrested the tenant on January 15, 2021. The conditions of a release order showing police and court file number was submitted into evidence. It states: "You will have no contact, directly or indirectly, with JB". The tenant continues to occupy the rental unit.

Analysis

The landlord has applied to end the tenancy for cause without giving the tenant a one month notice to end tenancy. This is provided for in section 56(2) of the Act, where it 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 explains the importance of landlord providing evidence that is unreasonable or unfair to wait to end the tenancy with a one month notice:

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)

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.

Based on the convincing and cohesive testimony provided by the landlord, the incident report, the surveillance camera image and release order conditions, on a balance of probabilities I find it likely that the tenant physically assaulted the landlord's agent JB on January 15, 2021. Pursuant to section 56(2)(a)(ii) of the Act, I find the tenant's behaviour seriously jeopardized the health and safety of the landlord.

If the landlord issued a notice for cause under section 47(1)(d), the landlord could not end the tenancy earlier than one month after the date the notice is received by the tenant. Due to the significant risk the tenant presents to the landlord, 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.

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.

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: February 16, 2021

Residential Tenancy Branch