



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Early End to Tenancy and an Order of Possession, pursuant to section 56; and a return of the filing fee pursuant to section 72 of the *Act*.

Counsel for the landlord, D.M, the landlords M.S and A.S., along with their witness S.M. attended the hearing on behalf of the landlord, while tenant M.R. and his witnesses M.R-W. attended on behalf of the tenant. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Witness S.M. explained an Early End of Tenancy application was given to the tenant in person on March 4, 2021. The tenant confirmed receipt of this notice.

I note no physical evidence was submitted in support of this application, however, I acknowledge that one document titled "Assignment of Lease X-#" was uploaded by the landlord but not provided to the tenant. Pursuant to Rule of Procedure 10.3, "the applicant must, within one day of the Notice of Dispute Resolution Proceeding package being made available by the Residential Tenancy Branch, serve each responding with copies of...evidence submitted to the Residential Tenancy Branch online." By the landlord's own acknowledgement, the document marked "Assignment of Lease X-#" was not served on the tenant, I therefore decline to consider it in my analysis.

Issue(s) to be Decided

Is the landlord entitled to an Early End of Tenancy? Can the landlord recover the filing fee?

Background and Evidence

While some confusion arose at the outset of the hearing due to the nature of the tenancy agreement, all parties present acknowledged a tenancy exists between tenant M.R. and the landlord M.S. and A.S. Rent is \$750.00 per month, and a security deposit of \$375.00 continues to be held by the landlords. The corporate landlord who have applied for this dispute assumed responsibility for the tenancy on October 17, 2019.

The landlord has applied for an Early End of Tenancy citing a purportedly violent incident that occurred on February 3, 2021. Both parties presented conflicting versions of events related to the nature of the dispute which took place on February 3, 2021.

Submissions were made by the landlord's lawyer, D.M. which outlined events that occurred on both January 27, 2021 and February 3, 2021. The landlord called witness S.M. to provide some further details around the events of January 27, 2021, while the tenant called witness M.R-W. to provide further detail around events of February 3, 2021. Landlord M.S. and tenant M.R. gave submissions regarding the events of both January and February 2021.

As noted previously, the parties provided different accounts of the matter but both acknowledged that events had transpired on the dates cited above. The landlord claimed that specifically on February 3, 2021, the tenant became physically aggressive, threatened him repeatedly, held a knife in a menacing manner and caused him to fear for his safety. Further to this incident, the landlord explained that the tenant continually disturbed his business by "hammering" above the restaurant while in occupation of the suite. In addition, the landlord cited a large amount of debris and garbage that had been thrown from the suite. Prior to the February 3, 2021 incident, the landlord alleged the tenant had in fact taken possession of the unoccupied neighbouring unit, changed the locks to the suite so as to gain exclusive possession of the suite, had installed a security camera on the premises to monitor the comings and goings of the suite and was in fact renting this space out on a night to night basis.

The tenant disputed the landlord's version of events. The tenant denied ever threatening the landlord and argued the landlord himself was in fact "breaking and entering" the suite. The tenant's witness M.R-W. testified that it was his understanding that tenant M.R. was the landlord and he was under the impression that the suite adjacent to the tenant's unit was for rent with M.R. acting as the landlord. The tenant stated he "did not recall" holding a knife but acknowledged it may have inadvertently

been possible because of the suite's kitchen being located next to the entrance to the neighbouring suite. When asked specifically about the reports of multiple persons coming from the suite the tenant stated he ran a "not for profit" and argued these persons were part of the agency who he was tasked with assisting.

Both parties acknowledged the police were called to the premises on February 3, 2021 with the landlord's application for dispute stating the tenant had been arrested on released on a condition not to contact the landlord, not to enter the rental unit and not to enter the landlords place of business located immediately below the dispute premises. A RCMP file number was also provided in the application's details.

During the hearing, the tenant repeatedly argued that landlord's application was given on the "wrong notice", did not contain a "worksheet" and was on "improper forms".

Analysis

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice, due to the reasons identified in section 56(2) of the *Act* **AND** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

It is evident that two incidents occurred between the parties. I must determine whether the nature of these incidents warrants an early end of tenancy. No physical evidence was presented at the evidence and I must rely merely on the oral testimony presented by both parties to make my determination.

As noted previously, conflicting versions of the January 27, 2021 and February 3, 2021 events were presented both by the applicant and respondent, and by their witnesses. After having considered the testimony of all parties present at the hearing, I find the landlord has shown on a balance of probabilities that it would be unreasonable for the landlord to wait for a 1 month notice to end tenancy to take effect.

I find the testimony presented by the landlord and his witness S.M. to be consistent with the submissions provided by the landlord's counsel D.M. S.M. was a credible witness who spoke to the threats and hostile nature of the tenancy and the testimony provided was consistent with that of the landlord. I find the version of events presented by the tenant regarding the February 3, 2021 not to be reasonable considering the caustic nature of the tenancy. While it remains impossible for me to determine what exactly

transpired on February 3, 2021, I find it highly unlikely that the tenant “inadvertently” had a knife in his hand after having washed the dishes while speaking to the landlord, further, I find significant questions must be raised by the testimony of witness M.R-W. whereby was under the impression that the tenant M.R. was the landlord for the neighbouring unit. I find this version of events, leads significant credence to the landlord’s version of events and for these reasons, I find the landlord was successful in their application. I find they demonstrated a significant and real threat to their personal safety.

I note that the tenant repeatedly argued that no “worksheets” existed as they related to the application and that the “application was done on the wrong notice.” As noted on page 1 of the decision, I find all parties were served in accordance with the *Act* with all applicable documentation. No notice to end tenancy exists in relation to an Early End of Tenancy and I find that the tenant was aware of the nature of the proceedings due to the contents of the Notice of Hearing which contained all details related to the dispute.

As the landlord was successful in their application, they may, pursuant to section 72, retain \$100.00 from the security deposit in satisfaction for a return of the filing fee.

Conclusion

The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit with **2 days** of its receipt the landlord may enforce this Order in the Supreme Court of British Columbia.

The landlord may retain \$100.00 from the tenant’s security deposit in satisfaction for a return of 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: March 24, 2021

Residential Tenancy Branch