



Dispute Resolution Services

Page: 1

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

In this dispute, the landlord applies for an order ending a tenancy under section 56 the *Residential Tenancy Act* ("Act"). They also seek to recover the cost of the application filing fee under section 72 of Act.

The landlord's agent, an employee and witness for the landlord, the tenant, and the tenant's articling student, attended the hearing on April 6, 2021.

No issues of service were raised by the parties and Rules 6.10 and 6.11 of the *Rules of Procedure*, under the Act, were addressed.

Issues

1. Is the landlord entitled to an order under section 56 of the Act?
2. Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on April 1, 2017 and monthly rent is \$852. The tenant paid a security deposit of \$400. There is no copy of a written tenancy agreement submitted into evidence, but the basic facts of the tenancy were not in dispute. The rental unit is one 45 rental units in a residential property managed by the landlord.

On March 12, 2021, the landlord filed an application for an order to end the tenancy on an urgent basis (under section 56 of the Act). In their application the landlord stated that

On March 11, 2021, the tenant threatened to shoot one of our Tenant Services Coordinators and actively tried to get someone who owed him a drug debt to follow our employee. Police file #[redacted] filed by Constable [name redacted.] Then on March 12, 2021 the tenant threatened other tenants in the building who phoned the incident in to police.

The landlord's agent provided oral testimony that essentially reflected what was described in the application for dispute resolution. They added that they had tried getting statements from other tenants in the building but were unable to do so for fear of retaliation. The landlord's witness (H.P.) testified that they had received a phone call from an unnamed source who said that there was a "hit" on the tenant services coordinator (C.A.). The contract killing was purportedly to be undertaken by the tenant, who was described as being armed and dangerous.

The agent explained that the employee (C.A.) against whom the threat was directed is on leave, partially due to this incident. That employee did not attend the hearing.

Finally, the landlord's agent commented that, even if they are unsuccessful in this present application to end the tenancy, that they need to demonstrate that this sort of behavior is completely unacceptable and cannot be tolerated.

The tenant's articling student began their argument by pointing out that the stakes are very high for the tenant. The tenant is a senior citizen with a disability; they cannot afford to lose their place to live. The articling student then noted that the onus of proof is on the landlord to prove their case on the basis of reliable evidence.

They referred to a total of twenty-two witness statements from other occupants in the residential property that had been submitted into evidence. A copy of those statements was reviewed by me in advance of the hearing. The tenant received three additional statements which they had with them on the morning of the hearing (I do not have a copy of those additional statements and will not consider them).

The articling student argued that the statements paint a picture of the tenants as one who is likeable, helpful, and popular. None of the statements suggest, either explicitly or implicitly, that the tenant poses any threat. Brief passages from three of the statements were read into evidence.

The articling student argued that the only two pieces of evidence provided by the landlord in support of their application were (1) an anonymous note, and (2) hearsay evidence given by the landlord's witness H.P. The anonymous note should, they argued, be given zero weight. And, the witness's testimony is separated by three degrees from its original source. What is more, the one witness against whom a threat was allegedly made – C.A. – did not testify at the hearing.

In rebuttal, the landlord's agent submitted that the reason why the note was anonymous is because of the author's fear of retaliation. Obtaining statements from residents of the building who fear for their safety is, the agent added, the reason why it is difficult to obtain such statements.

Analysis

Section 56 (1) of the Act permits a landlord to 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, and (b) granting the landlord an order of possession in respect of the rental unit.

In order for me to grant an order under section 56(1) of the Act, I must be satisfied that

- (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.

Finally, it should be noted that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim, which in this case is the landlord.

Evidence is the vehicle through which facts in issue are proved or disproved. Not all evidence is equally helpful in assisting a decision-maker to make findings with respect to the matters in issue. That is why evidence must be weighted, with the more trustworthy and probative evidence given more weight in coming to a decision on the matters in issue.

In this dispute, the only evidence provided by the landlord was (1) an anonymous note, and (2) hearsay evidence provide by the landlord's witness (which was summarized in a brief email that was submitted into evidence).

The one person (the other tenant services coordinator) who could have attended the hearing and provided first-person testimony as to the threat did not attend. While I appreciate that the coordinator is on leave, purportedly partially for reasons related to the alleged threat, it is incumbent upon an applicant to have their best witness attend a hearing where an alleged "hit" was made against that very witness. Without the witness in attendance, I give little weight to the employee's witness' testimony who did attend. A mere reiteration of a third party's evidence is insufficient to prove a fact, especially where those facts are in dispute.

As to the anonymous note, I must give it no evidentiary weight. Certainly, while it is not lost on me that some witnesses are reluctant to put their name and contact information on statements out of a fear for their safety, I am equally mindful that a person ought not be evicted based on an anonymous complaint. In weighing evidence, I must consider the reliability of that evidence. Without the opportunity for a respondent, or a decision-maker for that matter, to ask questions of, or cross-examine, the source of a statement's information, the reliability and veracity of such information must be called into question. In short, I give the information contained in the anonymous report, which was then given to the landlord's employees, zero weight.

In summary, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving their application for an under section 56 of the Act.

In respect of the landlord's claim to recover the cost of the application filing fee, section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recover the cost of the filing fee. As the landlord was not successful, I must dismiss their claim for the \$100.00 filing fee.

Conclusion

I dismiss the landlord's application, without leave to reapply.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: April 6, 2021

Residential Tenancy Branch