



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EIGHTLAND PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

On April 11, 2021, the Landlord made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession pursuant to Section 56 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

W.K. attended the hearing as an agent/owner for the Landlord. Both Tenants also attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

W.K. advised that he served each Tenant a Notice of Hearing and evidence package by hand on April 21, 2021 and the Tenants confirmed that they received these packages. Based on this undisputed testimony, I am satisfied that the Tenants were sufficiently served the Notice of Hearing and evidence packages. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

The Tenants advised that they did not submit any evidence for consideration on this file.

As a note, during the hearing, both parties would interrupt when the other party was providing testimony. The hearing was paused and both parties were reminded that they were advised how to conduct themselves during the hearing. The parties were cautioned that any further interruptions would result in being muted from participating in the conference call until it was their opportunity to provide submissions. As both parties were unable to abide by these rules after being warned, both parties were muted when the other party was presenting their submissions.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 1, 2020; however, there was a dispute with the amount of rent that was owed each month. A security deposit of \$1,750.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

W.K. advised that the neighbours complained about the Tenants yelling and screaming, about Tenant C.M. being verbally abusive and threatening them, and about the Tenants' loud music blaring from their truck that shakes the neighbours' walls. He stated that the Tenants would use profanities when verbally abusing and threatening the neighbours, and that C.M. threatened to kill one of the neighbour's dogs. As well, he submitted that the Tenants have caused extensive damage to the rental unit.

He stated that the police have been notified five different times regarding complaints about the Tenants and the police are waiting for the outcome of this proceeding. He submitted that after the Tenants did not pay rent on March 31, 2021, they were served with a notice to end their tenancy. He stated that it was at this point that C.M. "went berserk." He testified that C.M. would yell and scream at the neighbours, that he would verbally abuse two female neighbours, that he would direct obscene and offensive language their way, and that he would give neighbours the middle finger. W.K. stated that C.M. claimed to be a gang member, that he claimed to have boxing experience, and that he threatened the neighbours by shouting phrases like "come here, I'll fight you", "I'm going to get you", and "you better watch out". He also testified that C.M. said to him "I know where you live, I'll come and get you."

While he did not submit this as documentary evidence, W.K. advised that he received a mysterious text of a picture of a gun, from an unknown number. He stated that the police would regularly patrol the area looking for C.M. as he was known to them. He referenced the documentary evidence submitted to support his position regarding the behaviours and actions of the Tenants.

C.M. advised that he suffers from a few different health challenges, that W.K. antagonizes him, and that when provoked, he stated that "of course I'm going to freak out" because he "has a temper." He stated that the complaints started when W.K. removed a camera, that C.W. had setup outside, and damaged it. While he denied that he made any threats to the neighbours, he contradictorily stated that the "only reason that that happened" was because W.K. revealed personal details of C.W.'s life to the neighbours. He stated that he only threatened to kill the neighbour's dog when the neighbour threatened to eat his dog. Regarding the allegations of loud music from his truck, he stated that there is no evidence that this music was from his truck.

Tenant B.V. acknowledged C.M. would "get angry" but this was because W.K. provoked him. She confirmed being responsible for some of the damage outlined by W.K.; however, she refuted some of the alleged damage as well.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 56 of the *Act* establishes the grounds for the Landlord to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. In order to end a tenancy early and issue an Order of Possession under Section 56, I need to be satisfied that the Tenants, or a person permitted on the residential property by the Tenants, have 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 interests 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;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that 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, the tenant 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.

I find it important to note that the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In addition, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. I also note that the threshold of evidence required to justify an early end of tenancy Application is much higher than that of an Application for an Order of Possession based on a One Month Notice to End Tenancy for Cause.

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the evidence and testimony of the parties, I have on one hand W.K.'s testimony regarding the actions, behaviours, and comments primarily originating from C.M., as well as documentary evidence supporting W.K.'s position. While I have mostly

simple denials of W.K.'s allegations from the Tenants, I find it important to note that B.V. confirmed that C.M. would "get angry", that C.M. acknowledged that he would "freak out" because he "has a temper", and that these are consistent with his demeanour during the teleconference. Moreover, I also find this attitude and manner to be consistent with W.K.'s documentary evidence of text message responses from C.M. which demonstrate, in my view, highly offensive, inappropriate, and threatening language. Furthermore, I note that C.M. provided contradictory testimony during the proceeding. I find that these issues I have with the Tenants' testimony cause me to question their credibility on the whole.

Considered in its totality, I find W.K. to be a more credible witness than either Tenant. As a result, I prefer W.K.'s evidence. As such, I find it more likely than not that the Tenants, especially C.M., have acted in a combative, argumentative, and possibly a juvenile manner that is offensive and inappropriate. Furthermore, I am satisfied that C.M. has, on more than one occasion, threatened W.K. and the neighbours. I find that the combination of the behaviours and actions of the Tenants are clearly intentional, malicious, and that they could pose a danger that would fall into the category of seriously jeopardizing the health or safety or a lawful right or interest of the Landlord.

The Landlord must also demonstrate that "it would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 for cause" to take effect. Based on the consistent evidence and testimony of these troublesome past and current behaviors, I am satisfied that the Tenants will continue to behave in a manner of escalating hostility. Should the tenancy resume in this manner, this will greatly increase the likelihood of a genuine concern for the ongoing safety of the property, of any neighbours, or of any persons that may attend the rental unit.

Under these circumstances described, I find that it would be unreasonable and unfair for the Landlord to wait for a One Month Notice to End Tenancy for Cause to take effect. For these reasons, I find that the Landlord has provided sufficient evidence to warrant ending this tenancy early. As such, I find that the Landlord is entitled to an Order of Possession.

As the Landlord was successful in this claim, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Pursuant to the offsetting provisions of Section 72 of the *Act*, I permit the Landlord to retain \$100.00 from the security deposit to satisfy this debt.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. Should the Tenants 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: May 18, 2021

Residential Tenancy Branch