Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ET FFL

Introduction

The landlords seek to end the tenancy under section 56 of the Residential Tenancy Act ("Act") and to recover the cost of the application filing fee under section 72 of the Act.

This matter was first heard on April 27, 2021 (before a different arbitrator), adjourned to a hearing before me on April 29, 2021, and then adjourned a second time to May 10, 2021. The matter was adjourned both on April 27 and April 29 because the tenant explained that they had an emergency dental appointment.

Both parties, including legal counsel for the landlords, attended the hearing on May 10, 2021 at 9:30 AM.

Preliminary Issue: Tenant's Third Request for Adjournment

At the hearing on May 10, 2021, the tenant requested a further adjournment. He explained that he could not attend the hearing because he had to go and get the COVID-19 vaccine that was being organized and administered by his employer. I explained to him that, as stated in the Interim Decision of April 29, there would be no further adjournments and that this matter needed to proceed. The tenant said that we could proceed but that he would be hanging up and that he would simply file an Application for Review Consideration if the landlords were successful. The tenant then left the hearing at 9:33 AM.

> Rule 7.9 of the *Rules of Procedure,* "Criteria for granting an adjournment," states that
>
> Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

The tenant's brother attended a hearing on April 27 and told the presiding arbitrator that the tenant was unable to attend the hearing because the tenant was "undergoing an emergency dental procedure." The matter was then adjourned to April 29.

On April 29, the tenant attended the hearing at 11:00 AM and explained that he had an emergency dental appointment and that he was unable to attend the hearing. In that hearing, and in the Interim Decision, I ordered the tenant to provide documentary proof of that appointment before the next hearing. The tenant had ten days in which he had the opportunity to submit the requested document. He failed to do so.

On May 10, the tenant provided no supporting information regarding the purported vaccination. Nor did the tenant provide any explanation as to why he was unable to simply stay on the line and participate in the hearing. Quite frankly, given the reasons given in the past for requesting an adjournment, coupled with the tenant's failure to follow my order to provide proof of his most recent dental appointment, I do not find the tenant credible. Rather, I am inclined to find that the tenant was, and is, requesting adjournments for the sole purpose of prolonging the inevitability of a hearing.

Regarding the criteria for granting or disallowing the tenant's request for yet another adjournment, I find that the need for a further adjournment arises solely out of the intentional actions of the tenant. Further, given the gravity of the actions which lead the landlords to seek an early end of tenancy under section 56 of the Act, if those actions and events are in fact true, any further adjournment would give rise to significant prejudice—not to mention personal safety risks—to the landlords and occupants of the property. For these reasons, I must deny the tenant's request for an adjournment.

In short, the tenant was fully aware of all three hearing dates, chose to dial in to two of those hearings, chose to exit from those two hearings after only a few minutes, and, then failed to provide any proof of those appointments. Further, I do not find that a dental appointment or a vaccination event are circumstances that were not anticipated or beyond the tenant's control.

Issues

1. Are the landlords entitled to end the tenancy under section 56 of the Act?
2. Are the landlords entitled to recover the filing fee cost under section 72 of the Act?

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.

Landlords' counsel provided submissions regarding the events leading up to the present application. The landlord (Z.A.) affirmed and confirmed that counsel's submission and explanation of the events was an honest and accurate representation of those events.

The tenancy began on October 15, 2020 and monthly rent is $1,000.00. The tenant paid a security deposit of $500.00. There was no written tenancy agreement in evidence.

The rental unit is part of a large home in which other tenants reside, including, at one point, the landlords' daughter. Issues with the tenant started not long after the tenancy began. The tenant threatened the landlord's daughter: he threatened to harm her dog and he threatened to slit her throat. Fearing for her, and her dog's, safety, she moved out.

The tenant has engaged in multiple verbal and physical fights with other occupants of the property. On March 23, 2021, the tenant threatened to harm and kill other occupants. He broke a dead bolt on the property. On March 25, the tenant got into a fistfight with another occupant. He threatened to put that person in a body bag. Police were called, and there is an audio file in evidence.

The next day, the tenant threw a coffee maker out of the window. He then broke three more locks, and he hit another occupant's door with a chair. Police were again called. Shortly after, the tenant was observed walking around the property with a machete in hand, and again threatened to slit someone's throat. (The police were apparently called a total of seven times throughout the tenancy.)

On March 29, the tenant put a lock on the garbage bin, preventing anyone else on the property from using the bin. He would play loud music late at night, causing much disturbance.

On April 1, the tenant made comments regarding having knives and that he would use them. He referred to himself as a “war dog.” That same day, he came out of his room wielding a baseball bat and threatening to break the camera. Submitted into evidence is a photograph of the tenant wielding the bat, along with several video and audio files.

On April 25, the tenant apparently contracted COVID-19 and then threatened to get another occupant infected with the virus. He continued to threaten other occupants of the property, used racist language, and referred to himself as “management.”

The landlords and occupants are “extremely concerned for their safety” and request that the tenancy be ended under section 56 of the Act.

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), 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.

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.

In this case, I am persuaded that the tenant has, by (1) threatening to slit another occupant's throat, (2) getting into physical fights with other occupants, (3) threatening to harm and kill, (4) threatening to put another occupant in a body bag, (5) threatening to use a machete and/or knives on other occupants and the landlords, and (6) wielding a baseball in an aggressive manner, engaged in illegal activity (namely, *Criminal Code* offences of threats and assault), adversely affected the quiet enjoyment, security, safety and physical well-being of other occupants of the residential property.

Therefore, taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim that the tenancy must end pursuant to section 56(1) of the Act.

Further, given the dangerous behavior of the tenant, I find that it would be wholly unreasonable and unfair to the landlords and other occupants of the residential property to have to wait for a notice to end the tenancy under section 47 of the Act. In short, the tenant poses an extreme risk to the landlords and other occupants, and, I therefore order the tenancy ended, effective immediately.

An order of possession is issued to the landlords, in conjunction with this decision. The order of possession, which shall go into effect 2 days after it is served on the tenant, may be enforced in the Supreme Court of British Columbia.

Finally, in respect of the filing fee, section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlords succeeded in their application, I grant them $100.00 in compensation to cover the cost of the filing fee.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may

retain the amount." As such, I order that the landlords may retain $100.00 of the tenant's security deposit to recoup the cost of the filing fee.

Conclusion

I HEREBY:

1. **ORDER that the tenancy is ended effective immediately;**

2. **GRANT the landlords an order of possession, which must be served on the tenant and which is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia; and,**

3. **ORDER the landlords to retain $100.00 of the security deposit.**

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

Dated: May 10, 2021

Residential Tenancy Branch