



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LATERAL WEST DEVELOPMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

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

- an early end to this tenancy and an order of possession pursuant to section 56;
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the landlord served the tenants with the notice of hearing package and the submitted documentary evidence via posting to the rental unit door on May 7, 2021. Both parties also confirmed the tenants served the landlord with their submitted documentary evidence in person. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an early end to the tenancy and an order of possession?
Is the landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord seeks an early end to the tenancy as this is an urgent application about a tenant who poses an immediate and serve risk to the rental property, other occupants or the landlord. The landlord provided written details which states in part,

The house has been listed for sale. The tenants have been given several notices posted with proof of deliver with three full days notice. On the last visit, April 22, 2021, I was assaulted by T. and an unknown young lady. I have been to my doctor and the police file is ...

The landlord clarified that one of the tenants, T.L. had assaulted the landlord, H.B. when she attended the rental unit to conduct an inspection. The landlord stated that when the landlord attended on April 22, 2021 the tenants refused access to the rental unit and an assault took place where the tenant, T.L. pushed the landlord. The landlord stated that the landlord suffered injury in the form of bruises. The landlord referred to a video file "Video Evidence of Assault" with a duration of 6:21. A review of the video reveals at 0:50 seconds the male outside in a wheel chair saying, "Go walk in there, let her walk in there. Once she walks in there, my niece is going to fuck you up." At 1:27 of the video it shows the door opening and the tenant identified as the name Tenant, T.L. pushing the landlord' agent against the entryway sidelite. The landlord stated that this is when the assault takes place and the that landlord as a result sustained injury. The landlord also referred to photograph, "Bruise on hip April 22 2021", "Bruises to back of leg", "Bruises to arm" and "Bruises to face". Each of the photographs show bruising on the agent's body.

The tenants dispute that no assault took place. The tenants stated that the landlord had attended the rental unit without notice of inspection and was denied access. The tenants stated that they had filed a police complaint and that the local police had investigated the issue and would be forwarding recommended charges to the crown prosecutors office against the agent, however, the tenants were only able to provide the police incident number for the report and the name of the constable.

The landlord stated that a notice of inspection was served to the tenants posted to the rental unit door on April 18, 2021 to be conducted on April 22, 2021 but was unable to provide any proof of service.

The tenant, T.L. stated that the landlord's agent had "pushed me first" and then when asked did you push back? The tenant stated, "yes I pushed back". The tenant stated that the landlord was getting aggressive. The tenants referred to a submitted video, "Littlewing video 2", a 44 second video with a different angle of the entryway on April 22, 2021. At 2 seconds into this video the tenant closes the entry door while the landlord's agent was about to descend the stairs. At 4 seconds into the video the landlord's agent turns around and opens the door. It appears that a struggles ensues and the tenant pushes the landlord's agent back against a plant next to the entryway sidelite. The landlord's agent then goes down the stairs and takes a picture of the bathroom. At 20 seconds into the video, T.L. follows the landlord's agent downstairs and begins grabbing and pushing the landlord's agent towards the stairs. The video shows T.L. grabbing the landlord's shoulders. The remaining 24 seconds show a continued struggle between the two same parties. A review of the landlord's video at 2:28 shows the same scene. At 3:00 minutes the video shows the landlord's agent exiting the house.

Analysis

In accordance with section 56 of the Act, in receipt of a landlord's application to end a tenancy early and obtain an order of possession, an arbitrator may grant the application where the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health and safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property in significant risk;
- engaged in illegal activity that:
 - has caused or is likely to cause damage to the landlord's property;
 - 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
 - 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.

In addition to showing at least one of the above-noted causes, the landlord must also show why it would be unreasonable or unfair to the landlord to wait for a 1 Month Notice to take effect.

A one month notice to end tenancy for cause is the standard method of ending a tenancy for cause. An order to end tenancy early pursuant to section 56 requires that

there be particular circumstances that lend urgency to the cause for ending the tenancy. That is the reason for the requirement that the landlord show it would be “unreasonable or unfair” to wait for a cause notice to take effect.

In this case, the landlord has claimed that one of the tenants had assaulted her as per the landlord’s video submission. The tenants have disputed this claim and have also referred to a video submission which shows a different angle. The landlord has also provided photographs of bruising which the landlord claims was caused by the tenants.

Despite the landlord claiming that the police were called and the tenants claiming that a complaint was filed and that the constable would be forwarding a report to crown counsel for charges, neither party provided sufficient evidence of any charges being filed against either party. Both parties confirmed that as of the date of this hearing the police have not charged either party. As such any evidence regarding this is without foundation.

I find in reviewing the two videos and the submitted 4 photographs that I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants. Both videos show parts of the same incident, however, the tenants video clearly show that the landlord was attempting to open the door after it was closed by the tenant. It also shows the tenant pushing the landlord’s agent away toward the entryway sidelite. However, when the video continues it shows the another person follow the landlord’s agent downstairs to the bathroom. It clearly shows the tenant, T.L. pushing and grabbing the landlord’s agent. I find that this is sufficient to satisfy me that the landlord was assaulted by the tenants or a person permitted on the property by the tenants. As such, I find that the landlord has provided sufficient evidence that an assault took place against the landlord’s agent by the tenant/person permitted on property by the tenants. The landlord is granted an order of possession to be effective 2 days after it is served upon the tenants.

The landlord is entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an early end to the tenancy and an order of possession.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: June 2, 2021

Residential Tenancy Branch