



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

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.

The landlord attended via conference call and provided undisputed affirmed testimony.

The landlord was 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.

This matter was set for a conference call hearing at 9:30 a.m. on this date. The tenant did not call into the conference call hearing. I waited until 10 minutes past the start of the scheduled hearing time in order to enable both parties to connect with this teleconference hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only persons who had called into this teleconference.

Rule 7 of the Rules of Procedure provides that:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the tenant and in the absence of the tenant's participation in this hearing, the hearing commenced in the absence of the tenant.

The landlord provided undisputed affirmed evidence that the tenant was served with the expedited hearing package and part 1 of the landlord's evidence by posting it to the rental unit door on June 9, 2021. The landlord also stated that the same package was also emailed to the tenant's known email address. The landlord stated that a subsequent evidence package was emailed directly to the tenant on June 11, 2021. The tenant did not submit any documentary evidence. I accept the undisputed affirmed evidence of the landlord and find that the expedited hearing package and the initial documentary evidence to have been properly served as per sections 88 and 89 of the Act. However, the landlord's subsequent evidence package served via email on June 11, 2021 was not properly served. The landlord confirmed that an order for substitute service of evidence was not applied for nor granted. On this basis, the landlord's subsequent documentary evidence is excluded from consideration in this decision as the landlord has failed to properly serve the tenant. The landlord was advised that although the documentary evidence was excluded that this did not preclude the landlord for presenting this evidence in his direct testimony. The landlord confirmed his understanding.

Issue(s) to be Decided

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

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 claims that the tenant poses an immediate and severe risk to the rental property, other occupants or to the landlord. The landlord clarified that the tenant had made threats to other occupants of the rental property. The landlord referred to documentary evidence file "Police Report 21-21408". The landlord clarified that this file was a compilation of an email from the landlord to police consisting of a statement regarding the tenant. The landlord referred to a paragraph that stated,

My main floor tenants then messaged me that D. had just arrived back at the home and was shouting at their door, throwing items inside his unit and throwing items on the street and yard. At this time I called Vic PD to start a file. I then received another message from my main floor tenants that he had escalated and that I should call 911 (which I did). I then drove to the home, where the main floor tenants let me in the back door, as they were sheltering in place, scared for their safety and the safety of their 1 month old daughter.

I could hear D. upstairs causing damage to the unit, throwing items, yelling and talking to himself. We then all hid inside the home as D. went outside throwing his bed and mattress blocking the pathways to the backyard. D. then proceed to leave the yard heading towards Gorge. Rd.

I now fear for the safety of my main floor tenants and elderly tenant who lies in the basement suite (A.) and who shares laundry space with D. (see notes/emails below). I also fear for the safety of my property, as there was clearly damage being caused to the unit...

The landlord stated that he was unable to describe the threat made by the tenant as he was on the telephone with the police at the time.

The landlord also stated that the tenant has significantly interfered with or unreasonably disturbed another occupant by blocking other tenants from exiting the rental property. The landlord stated that the tenant had thrown a mattress and box spring blocking the pathway to the yard for the basement tenant.

The landlord also stated that the tenant was subsequently arrested and charged before being released by the courts on a release order with a "no go" to the residence or to have "no contact" with any of the tenants. The landlord described the release order in

which the tenant had been charged with on or about May 31, 2021 did cause fear of injury/damage to another person contrary to section 810 of the Criminal Code. The landlord stated that the tenant was released with several conditions which included having no contact with any of the other tenants and a no go to the rental property address with one exception which was in the presence of a peace officer. The landlord stated that the tenant did return to the rental property without a peace officer present but fled when he was discovered and before police could attend. The landlord stated that currently the tenant has an outstanding warrant issued for him for breaching his release order conditions.

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, I find that the landlord has provided sufficient evidence to satisfy me that an early end to the tenancy and an order of possession is warranted. Despite the landlord failing to provide any direct evidence of a threat made by the tenant, it is clear that an incident did occur in which the other tenants of the rental property were concerned for their safety. The landlord did not provide any witness statement of the other tenants who fear for their safety. The landlord despite being present at the time of the incident was not able to provide any direct evidence of what if any threats were uttered by the tenant. However, in this case, I accept the undisputed affirmed evidence of the landlord that an incident did occur in which the landlord, other tenants of the rental property were in fear for their safety. I also find in conjunction with the landlord's evidence regarding the arrest of the tenant and his subsequent release with conditions that the tenant had a "no go" and "no contact" with the occupants at the rental property. This is further exacerbated by the landlord's undisputed affirmed evidence that the tenant breached that order after being released and is now the subject of a warrant for arrest. On this basis, I find that the landlord is granted an order of possession to be effective 2 days after it is served upon the tenant.

Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and the order 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 23, 2021

Residential Tenancy Branch