



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROSPERO INTERNATIONAL REALTY
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

On June 28, 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*.

M.D. attended the hearing as an agent for the Landlord. The Tenant attended the hearing as well, with K.B. attending as his advocate. 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.

M.D. advised that the Tenant was served the Notice of Hearing and evidence package by posting it to his door on June 30, 2021. A signed proof of service form was submitted to confirm service of this package. While he did not check to see if the Tenant could view the digital evidence included pursuant to Rule 3.10.5 of the Rules of Procedure, he stated that he provided the Tenant with an opportunity to review this evidence if the Tenant was not able to on his own. The Tenant confirmed that he received the Notice of Hearing and evidence package and while he could have reviewed the digital evidence, he simply chose not to.

Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the Act, I am satisfied that the Tenant was duly served the Notice of Hearing and evidence package. Furthermore, as the Tenant had the capability to view the digital evidence, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

The Tenant advised that he served his evidence to the Landlord by hand on July 9, 2021. M.D. confirmed that he received this evidence, that he had reviewed it, and that he was prepared to respond to it. As such, I have accepted this evidence and will consider it when rendering this Decision.

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 March 1, 2021, that rent was currently established at \$1,050.00 per month, and that it was due on the first day of each month. A security deposit of \$525.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

M.D. advised that the Landlord received many complaints from other residents of the building regarding the behaviours of the Tenant. He stated that there were reported incidents during the day and night, and that the residents recorded the Tenant's

activities because they do not feel safe living in the building with the Tenant. This was all that was presented by M.D. at this time.

M.D. was informed that as the Applicant, it was his responsibility to present the Landlord's case. He was informed that he was required to make relevant submissions pertaining to the reason this Application was justified, and to reference supporting evidence to corroborate the Landlord's position. He was reminded that the threshold for justifying an end of tenancy on this type of Application was extremely high.

However, M.D. struggled to do so, and it was evident that he was either not prepared for this hearing or was unfamiliar with the details of this file. He was unable to answer many questions or provide particulars for why the Landlord made this Application, and he was barely able to refer to any of the evidence that was submitted. Even after continual prompting for pertinent information about the various incidents, which precipitated this Application, M.D. seemingly had little knowledge of what had transpired, and he provided little in the way of definitive or thorough submissions. He appeared to be sent by the Landlord to attend this hearing, but had little ability, knowledge, or preparation to speak to the actual issues of the case, to present any compelling or organized submissions, or to represent the Landlord adequately.

M.D. attempted to elaborate and testified that the Tenant made threats and exhibited aggressive behaviours towards other residents or staff. He stated that on April 27, 2021, the police were called due to the Tenant causing noise and banging on his wall so aggressively that the neighbour on the other side believed it would cave in. However, when the police arrived, the Tenant was not there. M.D. attempted to reference audio recordings that demonstrated the Tenant's behaviours, but he was not familiar with this evidence and could only speak generally about the contents.

From his limited submissions, two seem particularly relevant to this Application. In one audio, he stated that on May 5, 2021, the Tenant uttered the threat of "you're dead, man" to another resident of the building. Then, on May 16, 2021, the Tenant shouted "I'll fucking break your fucking face" to another resident of the building. However, the police were not called due to either of these threats.

K.B. advised that she is the Tenant's social worker, that he suffers from bi-polar disorder, and that he experiences auditory hallucinations. She submitted that during the time period of the complaints, the Tenant had not been receiving the same level of care, as there had been a transition with his support workers which allowed him to "slip

through the cracks of the mental health system.” This left him in a situation where his condition was not managed effectively. She acknowledged that the Tenant’s actions were not intentional but were a response to hallucinations. His medication has been changed, for approximately the last month, and he is back to his baseline where he will not experience these issues anymore. She stated that he is remorseful, and he wrote letters of apology to the all of the residents on his floor. She referenced a screen shot that was submitted as documentary evidence to demonstrate that the Tenant has no known criminal history.

The Tenant advised that he is usually quiet and polite; however, during the time period of the complaints, he confirmed that he was off his medication. He did not dispute any of the alleged incidents, but he noted that he has not caused any problems since his medication had been changed. He referenced a letter from his psychiatrist, that was submitted as documentary evidence, and he noted that his doctor would not have provided this letter of support if there were ongoing concerns for safety.

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 Tenant has 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.

When reviewing the totality of the evidence before me, it is undisputed that the Tenant had uttered threats to other residents of the building and engaged in seemingly aggressive, inappropriate, and potentially violent behaviours that continued for almost three months. While the Tenant's position is that these were isolated incidents and there have been no re-occurrences in the last few weeks after he received the appropriate care and treatment, I do not find that there is a guarantee that future, similar incidents will not occur. Moreover, I am satisfied that it is possible that any future threats/actions may escalate to the point that could endanger the welfare of other residents of the property.

Ultimately, I find that the Tenant's behaviours were aggressive, malicious, and unacceptable, and that they posed a danger that would fall into the categories of: significantly interfering with or unreasonably disturbing another occupant or the Landlord and 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 undisputed testimony of the Tenant's troublesome past, I accept that there is a genuine concern for the ongoing safety of the other residents of the property.

Under these circumstances described, I find that it would be unreasonable and unfair to the Landlord to wait for a One Month Notice to End Tenancy for Cause to take effect. For these reasons above, I find that the undisputed evidence is sufficient 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 these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of

Section 72 of the *Act*, I allow the Landlord to retain this amount from the security deposit in satisfaction of the amount awarded.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant 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: July 14, 2021

Residential Tenancy Branch