



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

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

- an Order of Possession pursuant to section 55; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant JB (the "Tenant") primarily spoke on behalf of the two co-tenants.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The tenant testified that they received the landlord's materials and had not served any evidence of their own. Based on their testimonies I find the tenant duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an early end of the tenancy and order of possession?
Is the landlord entitled to recover their filing fee from the tenant?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in August 2020. The monthly rent is \$1,575.00 payable on the first of each month. A security deposit of \$797.50 was collected and is still held by the landlord. The rental unit is a suite in a multi-unit building.

The parties agree that on May 31, 2021 there was a violent altercation in the common area of the building between the tenant and another occupant of the building. The tenant engaged in a fight with the other occupant with beverages, and fists being thrown. The landlord submitted into evidence security video showing the full confrontation, escalation and fight taking place. The landlord also submitted written statement from a witness who was present in the common area when the fight took place.

The 4-minute video footage shows the tenant repeatedly approaching the other occupant, taking a swing at the other occupant, and physically assaulting them. The tenant KD is shown in the common area observing the fight and taking little steps to de-escalate the situation.

The tenants testified that the other occupant is the instigator of the confrontation and they should not suffer the consequences of the altercation. The tenants said that it was a hot day and the fight was preceded by some honking of car horns by the parties in the parking area earlier. The tenants said that they have been charged with assault by the police for the incident and have not engaged in subsequent violence despite seeing the other occupant in the rental building.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other

occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

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.

I find that the landlord has provided sufficient evidence to show that the tenant has seriously jeopardized the safety of other occupants of the building and the landlord by engaging in a violent fight. Assaulting and engaging in a fight with another occupant is an inherently violent act which seriously jeopardizes the safety and wellbeing of others.

Based on the video footage it is evident that the tenant had ample opportunity to walk away from the other occupant and de-escalate the situation but chose not to do so. It is the tenant who continues to walk towards the other occupant, invading personal space and standing in a threatening and hostile manner. The eventual confrontation is instigated by the tenant who swings at the other occupant hitting their beverage. The tenant, after slipping and falling on the floor, rises and moves towards the occupant to engage them in a physical fight.

The tenants gave testimony attempting to justify their violent actions and claiming that the other occupant was the instigator. I do not find the tenants' submissions to be supported in the evidence or persuasive. Escalating a confrontation into a physical altercation is not justified regardless of the temperature or earlier incidents of honking of car horns. I find the testimony of both tenants to demonstrate a lack of awareness of the inappropriate nature of their own actions, and an absence of any remorse or culpability. I find the tenants' testimony and belief that their behaviour was reasonable under the circumstances to demonstrate that this is not likely to be an isolated incident and that it would be unreasonable and unfair to the other occupants and landlord to allow this tenancy to continue until a notice to end tenancy takes effect.

Accordingly, I issue an Order of Possession to the landlord pursuant to section 56 of the *Act*.

As the landlord's application was successful the landlord is entitled to recover the filing fee for this application. In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenants' security deposit in satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The security deposit for this tenancy is reduced by \$100.00 to \$697.50.

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 12, 2021

Residential Tenancy Branch