



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ET

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied to end the tenancy early and for an Order of Possession.

The Landlord stated that on August 25, 2021 the Dispute Resolution Package and evidence the Landlord submitted to the Residential Tenancy Branch on August 18, 2021 were personally served to the Tenant. The Tenant acknowledged receiving these documents, although she stated she was unable to view the video evidence contained on the evidence package. As the Tenant acknowledged receiving these documents, the evidence was accepted as evidence for these proceedings, with the exception of the video evidence the Tenant stated she was unable to view.

Rule 3.10.5 of the Residential Tenancy Branch Rules of Procedure specifies, in part, that a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence. The Landlord stated that she did not confirm that the Tenant could view her video evidence prior to this hearing. She stated that in an effort to ensure the Tenant would be able to view her video evidence, she sent the video recording to the Tenant via messenger on August 25, 2021. The Tenant stated that she received a text message from the Landlord on that date but she did not receive the video.

As the Tenant does not acknowledge being able to view the Landlord's video evidence, and the Landlord did not confirm, prior to the hearing, that it could be viewed by the Tenant, the video evidence was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

The Tenant requested that the hearing be adjourned to provide her with time to submit evidence for these proceedings.

The Tenant stated that on September 14, 2021 she opened the package she personally received from the Landlord on August 25, 2021. She stated that she was unable to open the package earlier due to “personal and financial crisis”. She stated that she does not have the ability to submit evidence electronically as she has limited access to wifi and limited data on her telephone.

The Tenant’s application for an adjournment was denied. In my view, the Tenant would have had ample time to submit evidence through a BC Service Centre if she had opened the Dispute Resolution Package that was served to her on August 25, 2021 in a reasonably timely manner. I find that the Tenant’s request for an adjournment is largely due to her decision not to open the Dispute Resolution Package in a timely manner. Regardless of financial and personal stresses, I cannot conclude that the Tenant was incapable of opening the package.

I find that it would be highly prejudicial to the Landlord to adjourn this hearing, which would result in a delay of at least six weeks. Given that the Landlord is seeking to end this tenancy early, I find that such a delay is unreasonable.

Issue(s) to be Decided

Is the Landlord is entitled to end this tenancy early and to an Order of Possession on the basis that the tenancy is ending early, pursuant to section 56(1) of the *Residential Tenancy Act (Act)*?

Background and Evidence

The Landlord stated that this tenancy began in May of 2021. The Tenant stated that it began on April 20, 2021. The parties agree the monthly rent is \$900.00.

In support of the application to end the tenancy early, the Landlord stated that:

- On August 06, 2021 she went to her chicken coop to feed her chickens;
- The Tenant was watering her garden nearby and she intentionally sprayed the Landlord directly in the face with a garden hose;
- She was recording the interaction because she had previous altercations with the Tenant;
- The incident was recorded on the video that was not accepted as evidence for these proceedings;
- After spraying the Landlord in the face, the Tenant told the Landlord she could not report the incident to the police because the Tenant did not physically touch her;
- She returned to her home and contacted the police;
- A police officer attended and spoke with the Tenant; and
- No charges were laid against the Tenant.

In response to the incident with the garden hose the Tenant stated that:

- On August 06, 2021 the Landlord served her with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities;
- She currently owes \$2,700.00 in rent;
- She contacted the police because she believed the Landlord was harassing her by serving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities;
- The police told her the matter should be referred to the Residential Tenancy Branch;
- Later that day she was watering her garden when the Landlord came to put her chickens to bed, at which time the Landlord was recording on her telephone; and

- She was afraid, she panicked, and she accidentally sprayed the Landlord with the garden hose.

In support of the application to end the tenancy early, the Landlord stated that:

- At approximately 10:00 p.m. on August 09, 2021 the Tenant was playing loud music in her vehicle and was revving the engine;
- Her son asked the Tenant to stop and the noise ceased for a short period of time;
- The revving engine and music began again approximately 20 minutes later; and
- She does not know how long the noise persisted.

In response to the incident the loud music/revving car engine, the Tenant stated that:

- At approximately 8:30 p.m. on August 08, 2021 the Landlord's son began tearing wood off a shed which is approximately 4 feet from the Tenant's bedroom;
- This frightened her so she contacted the police;
- The police informed her there was nothing they could do to assist;
- At approximately 10:30 p.m. she started both of her vehicles and moved them closer to her front door to ensure nobody could come to her front door;
- She was not intentionally "revving" her engines but one of her vehicles is a Volkswagen, which is loud;
- She was playing her music when she moved the vehicles;
- While she was moving her vehicles the Landlord's son began screaming at her about the noise;
- She turned off the vehicles and the music and returned to her home for a short period of time;
- She returned to her vehicle with her telephone and continued to play music until approximately 11:00 p.m.;
- The volume was at "17", which is loud, but not the loudest it can be; and
- Playing music in her vehicle made her feel safe.

The Landlord submitted a letter from a witness who was staying with the Landlord on August 08, 2021. In this letter the witness declared, in part, that the Tenant began playing loud music and revving her vehicle at approximately 10:30 p.m. on August 08, 2021; that she heard a "heated argument" between the Tenant and the Landlord's son; and it was difficult to hear the conversation due to the volume of the music.

In support of the application to end the tenancy early, the Landlord stated that:

- Sometime between August 05, 2021 and August 21, 2021 the Tenant removed a free-standing kitchen cabinet from the kitchen of the rental unit;

- The Tenant left the cabinet in the yard, where it was not protected from the elements;
- The Tenant threw the countertop from the cabinet into the adjacent park; and
- She did not give the Tenant permission to remove this cabinet from the unit.

In regard to the kitchen cabinet, the Tenant stated that:

- She removed the kitchen cabinet from the kitchen;
- She left the cabinet in the yard, where it was not protected from the elements;
- She left the countertop from the cabinet nearer to the Landlord's front door, where it was exposed to the elements; and
- In April of 2021 the Landlord gave her permission to remove some items from the unit, including this cabinet.

In support of the application to end the tenancy early, the Landlord stated that:

- On August 02, 2021 the Tenant dragged the mattress and the box spring, which was provided with the tenancy, through the backyard;
- The mattress/box spring was dragged through dog feces that had been left in the yard by the Tenant's dog; and
- The mattress/box spring was deposited near the Landlord's door.

In regard to the mattress/box spring, the Tenant stated that:

- On August 02, 2021 the Landlord illegally entered her rental unit to post a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities;
- She was afraid the Landlord would illegally enter her rental unit again;
- She placed the mattress/box spring against the gate in an attempt to prevent the Landlord from illegally entering her unit.

In support of the application to end the tenancy early, the Landlord stated that:

- On August 14, 2021 the Tenant cut the internet cable in the rental unit;
- The damaged internet cable temporarily disrupted service to the Landlord's home;
- The Landlord was able to restore internet service in her home by attaching a splitter to a different internet cable;
- She found the cut internet cable in the Tenant's garbage.

In regard to the internet cable the Tenant stated that:

- She cut the internet cable in her rental unit on July 13, 2021;

- She discarded the cable in her garbage;
- The internet cable provide service to an outlet for a laptop, which she does not use;
- She cut and discarded the cable because it was covered in mouse urine;
- She did not consider cleaning the cable, rather than discarding it; and
- The cable does not look dirty in the photograph submitted by the Landlord because it has been outside in the rain.

In support of the application to end the tenancy early, the Landlord stated that sometime in late July of 2021 the Tenant ran over a ladder that had been propped against a wood pile. The Tenant stated that she accidentally ran over the ladder on July 21, 2021.

In support of the application to end the tenancy early, the Landlord stated that on July 15, 2021 her house sitter was frightened by the Tenant breaking a large amount of china. The Tenant stated that she was breaking her grandmother's china in preparation for making a mosaic.

In support of the application to end the tenancy early, the Landlord stated that on July 19, 2021 contacted the SPCA to report her chickens were being maltreated; the SPCA investigated and required her to have one of her chickens examined by a veterinarian; the veterinarian concluded her chicken was in good health for her age. The Tenant stated that she contacted the SPCA as she had concerns about the Landlord's dogs and chickens, but she does not know the results of any subsequent investigation.

In support of the application to end the tenancy early, the Landlord stated that the Tenant has left a large amount of garbage on the property. The Tenant stated that she is arranging to have her garbage picked up by a friend.

Analysis

Section 56(1) of the *Act* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the *Act* and he may apply for an Order of Possession for the rental unit. Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property

- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has 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
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

I favor the Landlord's testimony, who stated that the Tenant intentionally sprayed her with the garden hose on August 06, 2021, over the Tenant's testimony that she accidentally sprayed the Landlord with the garden hose on that date.

On the basis of the Tenant's testimony, including her testimony that she contacted the police earlier that day because she had been served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that the Tenant was upset about being served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. Given that she was upset with the Landlord, I find it more likely that she intentionally sprayed the Landlord with the garden hose. Had the Tenant been panicked or been frightened at the sight of the Landlord, I find it more likely that she would have moved away from the Landlord when she saw her approaching the chicken coop, rather than "accidentally" spraying her with the hose.

I favor the Landlord's testimony, who stated that the Tenant caused a disturbance by "revving" her car engine, over the testimony of the Tenant, who stated that she was merely moving her vehicles closer to her unit and one of her vehicles is a Volkswagen, which as a loud engine. In reaching this conclusion I was influenced, in large part, by the letter from the witness who was staying with the Landlord, who declared that on August 08, 2021. While I recognize that this witness cannot be considered unbiased, I

can find no reason the witness would include this seemingly unnecessary information if it was untrue. If this witness were fabricating the noise disturbance, I would expect her to simply report the loud music and not the more uncommon disturbance of engine noise.

I favored the testimony of the Landlord in regard to the “revving” of the engine, in part, because the Tenant did not dispute that there was engine noise. Rather, she explained that the noise was the result of a loud Volkswagen engine. While I accept that older model Volkswagens can have engines that sound louder than other vehicles, I find it unlikely the sound of the engine would be described as “revving”. I find the Tenant’s attempt to justify the noise serves to support the Landlord’s submission that the Tenant was “revving” the engine.

I favor the testimony of the Tenant, who stated that the incident with the vehicles occurred on August 08, 2021, over the testimony of the Tenant, who stated that it occurred on August 09, 2021. I favor the Tenant’s testimony in this regard because it is corroborated by the Landlord’s witness, who also declared that it occurred on August 08, 2021. I do not find this error damages the Landlord’s credibility to any significant degree, as this error is easy to make and has little bearing on the issue.

I find that sometime between 10:00 p.m. and 10:30 p.m. on August 08, 2021 the Tenant was playing her music loudly in her vehicle; that she shut it off when she was asked to do so by the Landlord’s son; and that she turned it back on again a short while later. By the Tenant’s own admission, she played the music until approximately 11:00 p.m. and it was “loud”, although it could have been louder.

On the basis of the Tenant’s testimony, I find that the Tenant was upset because the Landlord’s son was removing wood from a building on the residential property and because he “screamed” at her when he asked her to turn off the music. I find, on the balance of probabilities, that the Tenant “revved” her car engine and played music loudly in an attempt to harass and/or disturb the Landlord.

I find that the Tenant’s testimony that she moved both of her vehicles closer to her front door because she was frightened and wanted to ensure nobody would come to her front door lacks credibility. I find this testimony is inconsistent with her subsequent testimony that she returned to her vehicle after the Landlord’s son “screamed” at her because playing music in her vehicle made her feel safe. If she wanted to prevent someone from

accessing her front door, I find it unlikely she would then spend time in the car that was parked outside.

Even if the Tenant was comforted by the loud music in her vehicle, I find that she knew, or should have known, that the loud music was an unreasonable disturbance. She should have understood it was a disturbance because she acknowledged the music was loud; the witness declared she had difficulty hearing the “heated” argument between the Tenant; and the Landlord’s son because the music was so loud.

On the basis of the undisputed testimony. I find that the Tenant removed a free-standing kitchen cabinet from the kitchen of the rental unit; that she left the cabinet in the yard, where it was not protected from the elements; and that she left the countertop in a different location on, or near the property, where it was exposed to the elements.

In the absence of evidence to support the Tenant’s testimony that she had verbal permission to remove a cabinet from the kitchen, which the Landlord denies, I cannot conclude that the Tenant had the right to remove this cabinet. Even if the Landlord had given the Tenant permission to remove that cabinet, I find that the manner in which it was removed was likely to cause damage to the Landlord’s property, as it was left exposed to the elements.

On the basis of the undisputed evidence I find that the on August 02, 2021, the Tenant removed a mattress/box spring from the rental unit, which was provided to her with the tenancy, and that she left it in the dirt in the yard. I find that the manner in which the mattress/box spring was likely to cause damage to the Landlord’s property, as it was left in the dirt and was exposed to the elements.

I find the Tenant’s explanation that she left the mattress/box spring against the gate in an attempt to prevent the Landlord from illegally entering her unit, is not credible. I have viewed the photographs of these items and I find the placement of them would do little to prevent a third party from entering the Tenant’s unit. I find it more likely that the mattress/box spring were placed in this location in an attempt to intimidate or harass the Landlord.

On the basis of the undisputed evidence, I find that the Tenant cut and discarded an internet cable in the rental unit, which temporarily disrupted the Landlord’s internet service. Even if the cable was dirty or contaminated, as the Tenant contends, the appropriate course of action would be to clean the cable or ask the Landlord to have it

cleaned. On the basis of the photograph of the internet cable submitted by the Landlord, I find it highly unlikely the cable could not have been cleaned. In my view, cutting the internet cable was a deliberate attempt to damage the Landlord's property.

On the basis of the incidents recorded above, I find that the Landlord has established grounds to end this tenancy pursuant to section 56(2)(a) of the Act. Specifically, I find that the Tenant significantly interfered with or unreasonably disturbed the landlord, who also lives on the residential property,

Section 56(2)(b) if the *Act* authorizes me to grant an Order of Possession in these circumstances only if 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 to take effect. I find the Tenant has demonstrated a pattern of behaviour that is wholly unacceptable and I find it reasonable to conclude that her behaviour may escalate if the tenancy continues for any extended period of time. I therefore find it would be unreasonable to require the Landlord to wait for this tenancy to end pursuant to section 47 of the *Act*.

I therefore grant the Landlord's application to end this tenancy early and I grant the Landlord an Order of Possession for the rental unit.

In adjudicating this matter, I have placed no weight on the fact the Tenant ran over a ladder, as there is insufficient evidence to refute the Tenant's testimony that it was an accident.

In adjudicating this matter, I have placed no weight on the fact the Tenant was breaking china on July 15, 2021, as I have no reason to discount the Tenant's testimony that she was making a mosaic.

In adjudicating this matter, I have placed no weight on the fact the Tenant contacted the SPCA to report concerns about the Landlord's dogs and chickens. Given that the SPCA directed the Landlord to have one of her chickens examined by a veterinarian, I find that the Tenant may have been acting in good faith when she contacted the SPCA.

In adjudicating this matter, I have placed no weight on the fact the Tenant has left a large amount of garbage on the property. Although this may be grounds to end the tenancy pursuant to section 47 of the *Act*, it is not grounds to end the tenancy early.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on September 30, 2021. This Order may be served on the Tenant, filed with 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: September 17, 2021

Residential Tenancy Branch