



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

On August 26, 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*.

P.H. and V.H. attended the hearing as agents for the Landlord and M.T. attended the hearing as counsel for the Landlord. However, the Tenant did not attend at any point during the 52-minute teleconference. At the outset of the hearing, I informed the parties 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, with the exception of M.T., provided a solemn affirmation.

M.T. advised that the Tenant was served the Notice of Hearing and evidence package by posting it to the Tenant’s door on September 7, 2021. A signed proof of service form was submitted to corroborate service of this package. He submitted that the Landlord did not check whether the Tenant had the ability to view the Landlord’s digital evidence prior to serving it, pursuant to Rule 3.10.5 of the Rules of Procedure. 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. As such, I have accepted all of the Landlord’s documentary evidence and will consider it when rendering this Decision. However, as the Landlord did not comply with the Rules of Procedure regarding the digital evidence, this will be excluded and not considered. The agents for the Landlord did provide submissions during the hearing as to the contents of these videos.

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.

M.T. confirmed that the tenancy started on June 14, 2021, that rent was currently established at an amount of \$900.00 per month, and that it was due on the first day of each month. A security deposit of \$450.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

He submitted that the Tenant was accused on July 22, 2021, by another resident (the “complainant”) of the building, of swinging an axe at her due to a dispute over a stolen cell phone. The police were called and attended this matter. Days later, the complainant was found murdered in her rental unit. He stated that the police had arrested the suspect and he suggested that there may be some connection with this person and the Tenant.

V.H. confirmed that on the morning of July 22, 2021, he saw the complainant banging on the Tenant’s door as it was the complainant’s belief that the Tenant stole her cell phone. At this point in time, there was no axe mark on the wall. He stated that the Tenant later on in the morning had called the police because she claimed that the Tenant swung an axe at her. He referenced a picture submitted as documentary evidence to corroborate the damage to the wall as a result of this incident. He testified that the police attended the scene and did not find the complainant’s cell phone.

Regarding the axe swinging allegation, he stated that the police provided no information with respect to their investigation on this matter. He stated that he later found the complainant's cell phone outside the Tenant's window, and that it was destroyed.

Both V.H. and P.H. confirmed that they have not been provided any information from the police with respect to the murder of the complainant, nor have they been provided confirmation of any potential connection of this incident to the Tenant.

M.T. advised that since the Tenant moved in, there has been a continual flow of suspicious guests of the Tenant that visit at all hours of the day, for very short periods of time. He submitted that these guests enter either through the front door of the building or through the Tenant's window, and that this pattern of activity is suggestive of criminal behaviour. He advised that the content of the videos demonstrates the volume of guests and the times that they visit. These guests have threatened residents of the building and have caused them to become fearful for their safety. Some residents have already moved out of the building because of this fear, some residents rarely leave their units, and some residents have installed security systems. He stated that V.H. has added 2 X 4 pieces of wood to his front door to secure it.

M.T. submitted that there have been dozens of complaints by residents of the building, and he referenced these that were submitted as documentary evidence. Specifically, he noted that one resident informed the Landlord that the Tenant had threatened to kick in her door. As a result of these complaints, the Landlord hired a security company to patrol the building from midnight to 8 AM daily. He referred to the security company's daily incident reports, submitted as documentary evidence, which mirror many of the complaints alleged by the residents of the building. As well, the Landlord has installed security cameras in the building. He also added that there appears to be substantial damage caused by the Tenant, or the Tenant's guests, in the rental unit.

V.H. confirmed that the residents of the building, including himself, fear for their safety on account of the Tenant's behaviours, or that of his guests. He advised that these people have made threats to him by stating, "you better watch out", "things will get tough for you", and "we're going to play hardball too". He submitted that the Tenant or his guests have ruined the windows by constantly entering and exiting from them.

P.H. reiterated that the Landlord was forced to hire a security company on account of the serious concerns the Landlord had with the behaviours and actions of the Tenant and his guests, at all hours of the day.

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, while the Tenant may have swung an axe at the complainant, I do not find there to be compelling evidence that definitively supports that the Tenant engaged in this action. Moreover, there was insufficient evidence provided that linked the murder of the complainant to the Tenant or a guest of the Tenant.

However, the undisputed evidence is that the Tenant has allowed guests into the building and the rental unit at all hours of the day and that these people are acting in a manner that is causing the residents of the building to fear for their safety. These guests

are also accessing the rental unit through the window, which adds to the suspicion of criminal activity. Moreover, these people have made threats to other residents of the building, and while these threats are not necessarily direct threats to harm, they are veiled threats nonetheless. Furthermore, the Landlord's concern for the actions of the Tenant and his guests had become so heightened that the Landlord believed it was necessary to hire daily security and install cameras to monitor the activities of these individuals.

When weighing the evidence on a balance of probabilities, I find it more likely than not that the Tenant's guests, that he allows into the building and into his rental unit through the window, are threatening and engaging in behaviours that endanger the safety of the residents of the building. Moreover, while it was not proven definitively, I am satisfied that the consistent pattern of evidence submitted would support a reasonable conclusion that the Tenant more likely than not was responsible for the axe incident and the subsequent damage to the wall.

Ultimately, I find that the Tenant's behaviour, and that of his guests, were likely aggressive, malicious, and unacceptable, and that they pose a danger that, at the very least, 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, I accept that there is a genuine concern for the ongoing safety of the other residents of the property. I find that there is a realistic possibility that future, worse incidents may occur should this tenancy continue. Moreover, I am satisfied that it is probable that any future threats/actions of the Tenant or his guests may escalate to the point that could further endanger the welfare of other residents or staff 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 this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of this claim.

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: September 21, 2021

Residential Tenancy Branch