



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* ("Act") for:

- an early end to tenancy and an Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "female tenant" did not attend this hearing. The landlord, the landlord's lawyer, and the male tenant ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 63 minutes from 9:30 to 10:33 a.m.

The landlord confirmed that he owns the rental unit. He said that his lawyer had permission to speak on his behalf at this hearing. The tenant confirmed that he had permission to represent the female tenant named in this application, who he said is his girlfriend (collectively "tenants").

At the outset of this hearing, I informed both parties that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"). The landlord, the landlord's lawyer, and the tenant all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to both parties. Both parties had an opportunity to ask questions. Both parties affirmed that they were ready to proceed with this hearing. Neither party made any adjournment or accommodation requests. The tenant affirmed that he did not want to settle this application with the landlord, and he wanted me to make a decision, regardless of the potential outcomes, which I explained to him.

This matter was filed as an expedited hearing under Rule 10 of the RTB *Rules*. The landlord filed this application on October 4, 2021 and a notice of hearing was issued by the RTB on October 7, 2021. The landlord was required to serve that notice, the application, and all other required evidence to the tenants.

The tenant confirmed receipt of the above documents from the landlord. The landlord confirmed receipt of the tenants' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's application and the landlord was duly served with the tenants' evidence.

Issues to be Decided

Is the landlord entitled to an early end to tenancy and an Order of Possession?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary and digital evidence and testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2020. Monthly rent in the amount of \$2,250.00 is payable on the first day of each month. A security deposit of \$1,125.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenants continue to reside in the rental unit. The rental unit is the upper floor of a house, where other occupants live in the basement unit of the same house.

The landlord's lawyer provided the following submissions. On July 26, 2021, the landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") to the tenant. The notice is for the landlord to use the property for his son to move in, which is still the plan. The tenant disputed the notice and failed to move out on the effective date at the end of September 2021. There is a future RTB hearing scheduled for both parties' applications regarding that issue. The tenant has been aggressive with lots of people around the rental unit. A violent altercation occurred between the tenant and the former basement occupant ("occupant TH") at the rental property on July 28, 2021, where criminal charges were laid. The video of the

altercation submitted by the tenant shows the tenant's aggressive behaviour and attitude. The basement occupant who still resides at the rental property ("occupant D") and neighbours of the rental property ("neighbours") do not feel safe, due to the tenant's behaviour. The landlord provided documentary evidence, including letters from the tenant's neighbours, regarding the physical altercation and aggressive behaviour by the tenant towards the landlord's workers, neighbours, and occupant D. A One Month Notice to End Tenancy for Cause ("1 Month Notice") was not issued because a 2 Month Notice was already issued to the tenant.

The landlord testified regarding the following facts. The landlord began construction with his workers ("landlord's workers") to construct a townhouse in the backyard of the rental property in the summer. As a result, the tenant lost the use of the backyard, and became upset with the landlord. The landlord began receiving letters from the tenant's neighbours, bylaw officers were called by neighbours, and the police attended at the rental unit, due to the tenant's behaviour. The tenant "verbally assaulted" the landlord, the landlord's workers and neighbours. The landlord's workers, neighbours and occupant D do not feel safe at the rental property. The landlord's workers are stressed by the tenant's comments and the landlord wants the safety of his workers while at the rental property. The landlord wants his son to move into the rental unit. On July 26, 2021, the tenant provided a letter to the landlord regarding issues with the rental unit, on the same date that the landlord issued the 2 Month Notice to the tenant. However, the landlord already had a copy of this notice in his truck when the tenant served him.

The landlord stated the following facts. Two days later, on July 28, 2021, the tenant got into a physical fight with occupant TH. The landlord feels like it is his fault that the occupant TH got "beaten up" and taken to the hospital, since he served the tenant with the 2 Month Notice just two days before. The tenant provided a video of the fight. The landlord got a call from one of the neighbours, informing him there was a fight. The tenant hit occupant TH over the head with a hard plastic water bottle, and repeatedly kicked and stomped on him, until he was unconscious. This caused injuries to occupant TH, including six stitches to head, a concussion, and a sprained ankle. Occupant D's daughter witnessed blood all over occupant TH and saw him unconscious. The tenant pressed charges against occupant TH and the police believed him because he was sober, as opposed to occupant TH, who was intoxicated. Occupant TH could not press charges against the tenant because the tenant already did, so the matter is now before the Court. The landlord is not assigning blame to anyone involved in the fight. The police would not give the landlord a report, the tenant sent an email to the landlord, and occupant TH also told the landlord about the incident. The landlord had to "piece together" what happened in the incident, on his own, based on information from different

people. Occupant TH was told to move out of the rental property because he was an alcoholic, on the request of his friend, occupant D. The neighbours are scared of the tenant, due to the increase in altercations with him. Some provided witness statements to the landlord, while others were scared to do so.

The tenant testified regarding the following facts. He had minimal issues at the rental property until occupant TH moved in. He has good cordial relations with occupant D at the rental unit. The landlord changed the locks to the tenant's storage and threatened to damage the tenant's items. On the same day that the tenant gave papers to the landlord regarding issues at the rental unit, the landlord served the tenant with a 2 Month Notice. The landlord is threatening to evict the tenant as retaliation. There will be a future RTB hearing regarding that dispute. The landlord can deal with his issues regarding the tenant outside of the RTB process. The tenant did not receive any warning from the landlord regarding these issues. The landlord did not give any written information to the tenant regarding any aggressive behaviour since the beginning of this tenancy, as stated by the landlord. The tenant did not know there were issues until he received the landlord's application paperwork for this hearing.

The tenant stated the following facts. On July 28, 2021, occupant TH assaulted the tenant, accused him of breaking into his car, and said he could not see who the tenant was. The tenant was unloading groceries at the time. Occupant TH provoked the tenant and punched him first, so the tenant hit him in self-defense on the head and shoulder with a plastic water bottle from his groceries. Occupant TH fell, sprained his ankle, and hit his head on the ground. The Crown has pressed charges against occupant TH, not the tenant, after the police conducted an assessment, not because the tenant was the only one sober at the scene. Occupant TH was intoxicated with "meth." Five police officers attended at the rental property after the incident and occupant TH admitted he physically attacked the tenant. The tenant has a restraining order against occupant TH, to stay away from the tenant, the female tenant, and the rental property. Occupant TH is facing serious criminal charges. The tenant filled out a victim impact statement regarding the incident and has been treated as the victim by police but not the landlord.

The tenant testified regarding the following facts. There have been no altercations involving the tenant, since the incident. The landlord waited until October 4th, 2021, two months later, to file this application against the tenant, on the same day that occupant TH had criminal charges read to him by the police. The landlord is "unethical" and this is a "huge exaggeration." One of the witness statements provided by the landlord for this hearing, was given by "neighbor BD," who was charged with uttering threats and

criminal mischief against the tenant. Another witness statement provided by the landlord for this hearing, was given by “neighbour VM.” The tenant called the police against her because she was knocking on his door every day. The neighbors have a relationship with the landlord. After the July 28, 2021 incident, the tenant called the landlord to tell him about it and the landlord did not respond to him after.

Analysis

Credibility

Overall, I found the landlord to be a more credible witness than the tenant. I found him to be honest, forthright, calm, candid, and consistent in his testimony. His version of events did not change throughout this hearing. The landlord and his lawyer did not interrupt or argue with the tenant while he was speaking during this hearing.

Conversely, the tenant provided his testimony in an angry, upset and agitated manner. The tenant interrupted and argued with the landlord and his lawyer while they were speaking during this hearing. I warned the tenant about his behaviour, but the tenant continued, despite my warning. The tenant was more focussed on arguing with the landlord, than presenting his submissions regarding this application.

Legislation

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice, due to the reasons identified in section 56(2) of the *Act* **AND** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlord must show, on a balance of probabilities, that:

- (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:*
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;*
 - (iii) put the landlord's property at significant risk;*
 - (iv) engaged in illegal activity that*

- (A) has caused or is likely to cause damage to the landlord's property,*
- (B) 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*
- (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- (v) caused extraordinary damage to the residential property...*

Findings

On a balance of probabilities and for the reasons stated below, I find that the tenant significantly interfered with and unreasonably disturbed the landlord and other occupants at the residential property.

I accept the landlord's documentary and testimonial evidence and the submissions of the landlord's lawyer. I find that the tenant has been physically and verbally aggressive towards the landlord, occupant TH, the landlord's workers, and neighbours, who are fearful of the tenant and do not feel safe at the residential property. I find that this is an ongoing pattern of behaviour by the tenant, not just one physical altercation on July 28, 2021.

I accept the landlord's witness statements from occupant TH, the landlord's worker DW, and three neighbours, BD, HM and PN, regarding the tenant's aggressive and unsafe behaviour on multiple occasions at the residential property. Although the tenant submitted that neighbour BD has a no-contact order and a pending criminal charge, he did not provide proof of a criminal conviction from the Court. I do not find the witness statement of neighbour BD to be less credible because the tenant has issues with him. There were also statements from the landlord's worker DW and other neighbours HM and PN, regarding multiple negative incidents with the tenant throughout his tenancy. I find that the above incidents establish a pattern of significant interference, unreasonable disturbance to the landlord and other occupants at the residential property.

I accept the affirmed testimony of the landlord and tenant, who both agreed that the tenant was involved in a serious physical altercation with occupant TH on July 28, 2021. The tenant testified that he physically struck occupant TH with an object on the head. The cause or fault of the altercation has not yet been determined, since a Court trial has not yet occurred. The tenant provided Court documents regarding same. Both parties agreed that the police were called, criminal charges were laid, and occupant TH was

injured. I accept the photographs provided by the landlord, of the injuries sustained by occupant TH in the altercation. I find that this serious and violent physical altercation on July 28, 2021, caused significant interference, unreasonable disturbance, and serious health and safety risks to the landlord and other occupants at the residential property.

During this hearing, both parties referred to the partial video submitted by the tenant as evidence of the July 28, 2021 altercation. In his own video and description, the tenant agreed that occupant TH was far and walking away from the tenant, and the tenant can be heard repeatedly asking occupant TH to “threaten me again!” In another video from July 5, 2021, submitted by the tenant as evidence, the tenant can be heard repeatedly yelling, without provocation, at neighbour BD to “get off the property!” and asking occupant TH “are you snorting cocaine in your car?” Neighbour BD and occupant TH are both far away from the tenant, who is looking down at them from a balcony area. At the beginning of the video, both neighbour BD and occupant TH are only talking to each other, until the tenant begins yelling at them both. Occupant TH is silent for most of the video. Therefore, the tenant’s own videos and descriptions demonstrate that he has had multiple incidents at the residential property with multiple people, including occupant TH and neighbour BD. I find that the above incidents establish a pattern of significant interference, unreasonable disturbance to the landlord and other occupants at the residential property.

I also find that the landlord’s application meets the second part of the test under section 56(2)(b) of the Act. I find that the landlord provided sufficient evidence that it would be “unreasonable” or “unfair” to wait for a 1 Month Notice to take effect.

The landlord confirmed that he did not issue a 1 Month Notice because he already issued a 2 Month Notice to the tenant on July 26, 2021, two days prior to the altercation on July 28, 2021. Both parties agreed that the tenant did not vacate the rental unit by the end of September 2021 and the tenant disputed the notice, so a separate future RTB hearing will determine that outcome. I accept the landlord’s affirmed testimony that when the tenant failed to vacate the rental unit by October 1, 2021, he filed this application on October 4, 2021.

I find that the landlord provided sufficient evidence regarding the urgency and seriousness of this situation. I accept the affirmed testimony of the landlord that the tenant is involved in a violent, unsafe, and aggressive pattern of behaviour with multiple people on multiple occasions, at the residential property. The tenant’s own videos, recorded by him, and submitted by him as evidence for this hearing, show the tenant’s aggressive behaviour with multiple people on multiple occasions at the residential

property. While the tenant claimed that he was not given written notice of his behaviour from the landlord, I find that there is no provision in the *Act*, requiring the landlord to detail each incident to the tenant in writing. I find that the tenant's behaviour has caused the landlord and other occupants to feel fearful and unsafe, presenting health and safety risks at the residential property.

Accordingly, the landlord's application for an early end to tenancy is allowed. The landlord is granted an order of possession effective two (2) days after service on the tenant(s).

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenant(s). I order the landlord to deduct \$100.00 from the tenants' security deposit of \$1,125.00. The remainder of the tenants' security deposit of \$1,025.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

Conclusion

The landlord's application for an early end to tenancy is granted.

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant(s). Should the tenant(s) 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.

I order the landlord to deduct \$100.00 from the tenants' security deposit of \$1,125.00 in full satisfaction of the monetary award for the filing fee. The remainder of the tenants' security deposit of \$1,025.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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: October 27, 2021

Residential Tenancy Branch