



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

The Landlord applies for an early termination of the tenancy pursuant to s. 56 of the *Residential Tenancy Act* (the “Act”).

C.G. appeared as agent for the Landlord. The Tenant did not appear, nor did someone appear on their behalf. The hearing began as scheduled at 1:30 PM in accordance with Rule 7.1 of the Rules of Procedure. Pursuant to Rule 7.3, the hearing was conducted in the absence of the Tenant.

The Landlord’s agent affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which participants are prohibited from recording the hearing. The Landlord’s agent confirmed that they were not recording the hearing.

The Landlord advises having served the Notice of Dispute Resolution by posting it to the Tenant’s door on September 24, 2021. I find that the Notice of Dispute Resolution was served in accordance with s. 89 of the *Act*. Pursuant to s. 90, I deem the Tenant to have been served with the Notice of Dispute Resolution on September 27, 2021.

The Landlord served their evidence package on the Tenant by way of registered mail sent on September 24, 2021. The Landlord provided a tracking number, which indicates the package has not been picked up by the Tenant. Policy Guideline #12 states the following with respect to service via registered mail:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature

option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

The Landlord is entitled to serve the evidence by way of registered mail in accordance with s. 89 of the *Act*. Policy Guideline #12 is clear that failing to pick up registered mail sent to the correct address does not impact the deemed service provisions of the *Act*. I find that the evidence was served in accordance with s. 89 of the *Act*. Pursuant to s. 90, I deem the Tenant to have been served on September 29, 2021.

Issue(s) to be Decided

- 1) Whether the tenancy should end early without notice and an order for possession granted to the Landlord?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord provided a written tenancy agreement and confirmed that the Tenant moved into the rental unit on March 1, 2018. Rent is payable on the first day of each month in the amount of \$375.00. The tenancy agreement indicates that a security deposit of \$187.50 was to be paid by the Tenant, however, since the tenancy began the Tenant has failed to pay the security deposit. As a result, no security deposit is currently held by the Landlord in trust for the Tenant. The tenancy agreement contains a “good neighbour” addendum. However, the addendum was not provided to me by the Landlord.

The Landlord provides a narrative on a series of incidents that have occurred with the Tenant beginning on May 1, 2021. On the first occasion, the Tenant called a staff member at the residential property a “fatass heifer”. The Tenant was provided with a letter dated May 4, 2021 which details the incident of May 1, 2021 and a warning that the conduct was in breach of the “good neighbour” addendum.

The following incident took place on June 25, 2021. The Landlord submits an incident report which details the events that occurred on June 25, 2021. The Landlord’s agent advised that the incident reports are created following serious issues respecting tenants

as part of their standard process. The incident report details the Tenant physically assaulting another tenant of the residential property. The Tenant appears to have pushed the other tenant over, kicked the other tenant in the head, and punched the tenant repeatedly on the ground. Staff members broke-up the fight. The other tenant refused to contact police following the incident and refused that first responders attend to address any physical injuries he may have sustained.

The Landlord's agent advised that the incident of June 25, 2021 was the first incident of physical violence exhibited by the Tenant since the tenancy began. The Landlord indicates having told the Tenant of their desire that the tenancy end. Rather than seek an order for possession at that time, the Landlord would arrange alternate accommodations for the Tenant with the understanding that the Tenant vacate the residential property once those arrangements had been made. The Tenant continued to reside within the residential property while this occurred.

The final incident took place on September 9, 2021. The Landlord provides a second incident report which details that the Tenant was generally agitated and called a transgendered member of the staff a "faggot". Sometime after this initial incident, the transgendered staff member went outside to have a cigarette where she was confronted by the Tenant. The Tenant raised his fist threatening to hit the staff member and struck her with a guitar that he had been carrying. The staff member began to run away and the Tenant chased her down the street. The Landlord characterized this as a transphobic attack on the staff member. Police were contacted after the incident and the staff member filed a Worksafe BC claim.

The Landlord issued a One-Month Notice to End Tenancy on September 9, 2021 with an effective date of October 31, 2021. The Landlord advised that no application has been made with respect to this Notice to End Tenancy as the effective date has not yet passed. The Landlord has not received a dispute from the Tenant.

The Tenant provided a letter to C.G. sometime in mid-September 2021 before receiving the Notice of Dispute Resolution from the Residential Tenancy Branch on September 24, 2021. The note was submitted into evidence by the Landlord. C.G. confirmed the note was from the Tenant and she received it directly from the Tenant. The note is in cursive writing, some of which is indiscernible to me. I need to reproduce the note in exact detail though the Tenant variously calls C.G. a "cunt", that he hoped she would "get COVID and die you cunt, if not just die" and that she "eat shit and die".

C.G. notified the Tenant upon receiving the note that the Landlord had filed to end the tenancy early. The Landlord indicated that the Tenant had been at the residential property intermittently since the conversation when the note was provided to C.G.. The Landlord advises that the Tenant continues to occupy the rental unit.

Analysis

The Landlord applies for an early termination of the tenancy pursuant to s. 56 of the *Act*. A landlord may end a tenancy early under s. 56 where a tenant or a person permitted on the residential property by the tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- 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, 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 has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
- caused extraordinary damage to the residential property,

These grounds, as set out in s. 56(2)(a), mirror those found within s. 47(1)(d) to (f). The key difference between these sections of the act is that under s. 56 no notice is given to end the tenancy on the basis that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a one-month notice given under s. 47 to take effect.

Policy Guideline 51 sets out, at page 4, that applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. Policy Guideline 51 provides examples, including acts of assault, vandalism, production of illegal narcotics, and sexual harassment.

I accept the Landlord's uncontroverted evidence in its entirety and the Landlord's submissions corresponds with events described within the incident reports that were created contemporaneously with the incidents of June 25, 2021 and September 9, 2021.

I have no difficulty in finding that the Tenant has significantly interfered with and disturbed another occupant of the building following the assault of the other tenant on

June 25, 2021. I further find that the same incident was illegal activity, namely criminal assault, which adversely impacted the other tenant's safety and physical well-being.

With respect to the incident of September 9, 2021, I find that the Tenant has significantly interfered with and unreasonably disturbed the transgendered staff member of the Landlord. I find that the staff member, though not an occupant or the Landlord, is covered by the protections contemplated under s. 56 as an employee of the Landlord. I further find that physical assault of the staff member was illegal activity, namely criminal assault, which adversely impacted the staff member's safety and physical well-being.

Finally, the handwritten note of provided to C.G. in September 2021 is deeply concerning. I would characterize the note as menacing in nature and more than a simple expression of frustration. I find that the note could properly be characterized as criminal harassment, which is prohibited by the criminal code. I further find that the note, which is an illegal activity, adversely impacts the security and safety of C.G..

I note that the Landlord has issued a One-Month Notice to End Tenancy, signed September 9, 2021. The Tenant continues to reside within the rental unit, though appears to frequent the residential property with less frequency. The effective date correctly states the tenancy is to end on October 31, 2021, as per the requirements of s. 47. I find that the incidents of assault on September 9, 2021 and June 25, 2021 are sufficiently serious that it would be unreasonable and unfair to the Landlord to wait for the Notice to End Tenancy to take effect and, if needed, to bring a subsequent application for an order for possession. I accept that the Landlord had not acted sooner following the incident of June 25, 2021 on the basis that it was attempting to find alternate housing for the Tenant and that the subsequent incident of September 9, 2021 forced the issue. Indeed, the Tenant's behaviour appears to have been unimpeded, which included the note sent to C.G. after being issued the Notice to End Tenancy.

Accordingly, I order that the tenancy end without notice pursuant to s. 56 and the Landlord shall have their order for possession.

Conclusion

Pursuant to s. 56 of the *Act*, I order that the tenancy, which began on March 1, 2018, be ended immediately. I grant the Landlord an order for possession. The Tenant is to provide vacant possession of the rental unit to the Landlord no later than **two (2) days** after receiving a copy of the order.

It is the Landlord's obligation to serve the order for possession on the Tenant.

If the Tenant does not comply with the order for possession, it may be filed by the Landlord 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: October 18, 2021

Residential Tenancy Branch