



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAXSAVE REAL ESTATE SERVICES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an early termination of the tenancy and an Order of Possession pursuant to section 56 of the Act, and to recover the cost of their filing fee.

The Tenant, S.T., and an agent for the Landlord, L.S., ("Agent"), appeared at the teleconference hearing and gave affirmed testimony, although the Tenant joined the call six minutes late. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenant confirmed that she had received the Application and the documentary evidence from the Agent and had reviewed it prior to the hearing. The Tenant confirmed that she had not submitted any documentary evidence to the RTB or to the Landlord.

Preliminary and Procedural Matters

The Agent provided the Landlord's email address in the Application and the Tenant provided her email address at the outset of the hearing. They confirmed their understanding that the decision would be emailed to both Parties, with any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession based on the early termination of the tenancy in accordance with section 56 of the Act?

Background and Evidence

The Landlord submitted a copy of the tenancy agreement for this tenancy, which was started with another landlord. The Landlord in this matter is the property manager for the new owner. The tenancy agreement was signed by the Tenant and her previous landlord. The Parties confirmed the following details of the tenancy. It began on October 9, 2019, with a current monthly rent of \$850.00, due on the first day of each month. They confirmed that the Tenant paid the Landlord a security deposit of \$425.00, and no pet damage deposit. The Agent confirmed that the new owner holds the security deposit.

In the hearing, the Agent said that the reason they seek an early termination of the tenancy and an order of possession is because another tenant of the residential property reported that the Tenant had threatened them with a weapon on October 5, 2021. The Landlord stated the following on their Application:

Tenant [S.T.] walked into unit #1 [residential property address] screaming and wielding a bladed weapon at tenant [C.P.] and his guest inside [the other tenant's suite] at 5:25PM October 5, 2021. [The Tenant] was taken away by the RCMP. She is extremely unstable and poses a threat to life. Police File #: [number provided].

The Landlord referred me to an email from the other tenant (via his mother's email address), with further details of what occurred on October 5, 2021 at the residential property. This evidence states:

Incident occurred at 5:25PM October 5

I was sitting in my room peacefully watching a movie when I heard a slight crash and bang followed by an unfamiliar voice coming from down the hallway. I opened the door to discover [the Tenant] standing in my main hallway holding some sort of pipe shaped device with what appeared to be a knife attached to it. Her body language was extremely threatening and when confronted she tried to force her way further down the hallway. I immediately demanded that she exit my home and when she finally went to exit she was still wielding her homemade

weapon. When she reached my front door she tried to take my baseball bat and held it in a threatening manner before throwing it into the door. By now RCMP were on their way and we managed to get her out the door. When learning we called the RCMP [the Tenant] became totally irate with anger and started kicking my door as hard as she could, damage to the door is present and will SMS photos when I can. She managed to run back downstairs to hide her weapon knowing cops were on the way, and ran down the street. Once detained I was asked to make my statement and placed a No Contact order on her. I fear it will not end here and both myself and roommate fear that the next incident could have a much worse outcome. I no longer feel safe in my own home. This is a serious line that she has crossed and I sincerely hope we can get this dealt with ASAP.

POLICE REPORT FILE # [number]
CONSTABLE [R.] .

[reproduced as written, with identities concealed]

The Agent said that the property managers were not present at the residential property on the day of the incident, which, the Agent said, is why they asked for a report from the other tenant, as soon as possible.

I asked the Tenant what happened that day, and she said:

Events leading up to this situation – the weekend before this happened, there was a lot of things going on upstairs A lot of uncomfortable things I was hearing. A lot of coughing and gagging like someone was sucking dick and doing drugs. I saw a lot of people up there. One time someone came over who had a hurt leg. Like he had a baseball bat to the leg. Also, a white truck taking some person away.

The day that this happened, I was sitting in my living room wanting to watch a movie. The coughing was really bad, and the vacuuming was really worse. So, I go upstairs to see if people were okay. I thought it was a drug house, with people coming and going - you should know the people in the house who live with you. I knew the person upstairs and in the other basement suite, I knew the tenants.

The day leading up to the incident. I was concerned about the women up there. I asked the Tenant why she did not call the police, and she said:

They wouldn't have went in to see if they were okay. That's just how I'm feeling. I've told [the property managers] a lot of things that have been going on upstairs. Like [the upstairs tenant] coming upstairs. I called [the property managers] and told them and complained about that. She was very rude.

I asked the Tenant if she had taken a weapon with her for protection, and she said:

No, I didn't have anything on me. I had my cell phone, maybe a lighter. There was a girl vacuuming on her hands and knees, she said she was fine, but she looked like she was high on drugs. I asked if I could see if the other people were okay. And one room was empty – no one was in there. Then [S.] comes out of the bedroom all fully clothed. [The other tenant] comes out second later. and grabbed a blanket, like he didn't have any clothes on.

Then I was backing out as [S.] was coming out of the room. They were yelling at me - I just wanted to see if everybody was okay. There was a baseball bat hanging behind the door. I don't like violence. So, I grabbed the baseball bat behind the door, because I thought it was violent.

I asked the Tenant if she had been threatened with the bat before this, and she said:

Not me, but I've heard him downtown – somebody came by and he and his friend had the baseball bat.

The Tenant acknowledged that the police came and that she was charged, as a result of this incident; however, she said that the charges against her were dropped.

The Agent responded, as follows:

Having not been there, I can only say that it's hearsay. I have inspected [the other tenant's] property and the other suite; they're both cordial; they are fine. We had troubles, but we corrected that. [the other tenant's] had been open - never refused my entry ever. I can't say that about [the Tenant]. We were refused entry. My assistant, [L.], was with me.

I have seen the text messages. [The Tenant] has been abusive with [L.]. I usually take a witness . I cannot condone [the Tenant] entering someone's suite. The proper procedure would have been to call us or call the police. That is a breach of privacy and unlawful, and unacceptable under all circumstances.

I noted that while the Agent was making the last few comments, the Tenant was muttering agreement that she shouldn't have done what she did.

I asked the Agent if there had been any other incidents, and she said:

There's been a lot of verbal abuse, not allowing access. I do remember that the heat was turned off in the suite by the breaker. Had there been no one upstairs, we would have had frozen pipes. We sent a heat specialist on three times - it was the breaker turned off intentionally.

I asked the Agent if there had been any other incidents with violence, and she said: "Not with these particular tenants, no."

I asked the Tenant if and why she turned off the heat in the residential property, and she said it was because the other tenants were smoking inside. She said:

They've been smoking cigarettes in the house, since they moved in. And last winter it got so bad that it leaked into my suite, and I have asthma and other health issues. I cough up black stuff... I told them so many times. They still smoke inside. I never see them outside.

I asked the Tenant what the heat had to do with the smoke, and she said:

It comes into my suite with the heat, and I think they're ashing in the vent. That is why I turned it off. It leaks down through the vents. I didn't have any heat, because of the cigarette smoke.

I've always been a good tenant and always paid my rent on time. I don't understand why they're protecting [the other tenant] very much. Why are they protecting a drug dealer?

The Agent confirmed that the Tenant had always paid her rent on time.

I asked the Tenant if the other tenant had ever threatened her. She said:

Yes, he's come at me with an antenna from a car. I called [the property managers] ... But not the police; I've tried to avoid the police. They haven't really helped me that much. It's mistrusting with the police.

If they're drug dealers and stuff, then I would get hurt I don't want to be a rat.

I allowed the Parties to make any last statements before I ended the teleconference hearing. The Agent said she did not have any other testimony. The Tenant's final testimony is as follows:

I know what I did was wrong, I was going to even..., but they are partying and stuff. I've been quiet. Before they moved in there was a single Mom with her kid who also smoked. She smokes where the stairs are, and it never leaked into the house. So that being said, why would the cigarette smoke constantly be inside. [S.] and [the other tenant] smoke, and the other girl and her boyfriend smoke upstairs.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 56 of the Act states that a landlord may apply for an order for an early end to the tenancy, if 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;
- . . . and

(b) 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 [*landlord's notice: cause*] to take effect.

In order to establish grounds to end the tenancy early under section 56 of the Act, the landlord must not only establish that they have cause to end the tenancy, but that it would be unreasonable or unfair to require the Landlord to wait for a notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the testimony and documentary submissions of the Parties, I find that the Landlord has met that burden.

I accept the Agent's evidence that the Tenant significantly interfered with or unreasonably disturbed another occupant and the Landlord of the residential property by her actions on October 5, 2021. I find that the Tenant put the Landlord's property at significant risk by turning off the heat; had the pipes had frozen, there would have been considerable damage to the residential property. I find that this action also significantly interfered with or unreasonably disturbed other tenants and/or occupants.

The Tenant said that she was not charged by the police, as a result of the October 5, 2021 incident; however, being charged criminally has a higher standard of proof than does a finding under the Act. As such, a lack of a police charge does not strongly affect the result of these administrative proceedings.

Even if I accept the Tenant's version of events, her acknowledgement that she entered the other tenant's unit without his permission is grounds for eviction. However, I take note of the Tenant's remarks of agreement when the Agent testified that the Tenant should not have done what she did – the Landlord's version of events. Further, the Tenant stated outright: "I know what I did was wrong". These pieces of evidence lead me to find that it is more likely than not that the Landlord's version of events of what happened on October 5, 2021 is the reliable and credible version, and I accept it.

Due to these conclusions, and pursuant to section 56 of the Act, I therefore find that the Landlord has proven on a balance of probabilities that the Tenant significantly interfered with or unreasonably disturbed another occupant and the Landlord, as well as having put the Landlord's property at significant risk.

I am also satisfied that it would be unreasonable and unfair to the Landlord and the other tenant to wait for the One Month Notice to End Tenancy to take effect, as I find without it, the Landlord is less likely to be able to preserve the other tenants' quiet enjoyment of the residential property.

I therefore confirm the Landlord's Application to end this tenancy early, pursuant to section 56 of the Act. I grant the Landlord an **Order of Possession** of the rental unit, which will be **effective two days after it is deemed served on the Tenant**, pursuant to sections 56 and 90 of the Act.

Conclusion

The Landlord's Application is successful, as they provided sufficient evidence on a balance of probabilities to establish that the Tenant poses an immediate and severe risk to persons and/or property in the residential property.

Pursuant to section 56 of the Act, I grant an Order of Possession of the rental unit to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: November 05, 2021

Residential Tenancy Branch