



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capital Region Housing Corporation and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on December 17, 2021 seeking an order to end the tenancy on the basis that the Tenant poses an immediate and severe risk to the property, other occupants or the landlords. They also seek reimbursement of the Application filing fee. The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “*Act*”) on January 24, 2022. In the conference call hearing I explained the process and provided the attending parties.

Both parties attended the hearing and the Tenant confirmed they received the Landlord’s prepared documentary evidence. The Tenant did not prepare documents for this hearing. On this basis, the hearing proceeded.

Issues to be Decided

Is the Landlord entitled to an order of possession that ends the tenancy for cause and without notice by s. 56 of the *Act*?

Is the Landlord entitled to recompense of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The tenancy started on July 1, 2019. The rent amount of \$570 is due on the first of each calendar month. The Landlord holds the security deposit of \$280.

The parties advised that the tenancy will end on February 28, 2022. In a prior dispute resolution process in which the Landlord sought to end the tenancy via a notice to end tenancy, the Arbitrator granted an Order of Possession to the Landlord for that date. In this hearing, the Tenant advised they are seeking out new accommodation with the focus of moving out on that date.

The Landlord brings this Application because of what they deem to be the immediate and severe risk posed by this Tenant to other residents in the rental unit building. This is an urgent Application under s. 56 of the *Act* for such purposes. The Landlord presented that the Tenant assaulted their neighbour on December 11, 2021. They spoke directly to the neighbour who confirmed the Tenant punched them in the face. After this, the Tenant tried to enter that neighbour's unit and from the outside threw cans of cat food on to the Tenant's balcony. Two witnesses confirmed that the Tenant tried to enter the neighbour's unit; they also confirmed that the Tenant's neighbour told them directly they were assaulted. On their direct observation, the Tenant's face bore signs of being punched.

The Landlord provided the following evidence:

- A statement from a witness who was in the neighbour's unit at the time of the incident sets out their account. The Tenant was yelling at the neighbour when the neighbour opened their rental unit door to examine some external noise in the hallway. At that moment, the Tenant punched the neighbour in the face. After this the Tenant was throwing cans of cat food on to the Tenant's balcony, then tried to enter the neighbour's rental unit. This witness ascertained from the Tenant that they punched the neighbour.
- A statement from the neighbour dated December 14, 2021. They "exchanged words" with the Tenant when they opened their rental unit door. After this the Tenant "punched me in the face." This also described cans thrown onto their balcony, and the Tenant trying to enter the neighbour's own rental unit.
- A second witness who answered the neighbour's call of distress after the incident. They provided their account of what the Tenant told them after the incident. They observed the Tenant's red face when they visited the Tenant shortly after the incident. This witness also described thrown onto the balcony and the Tenant attempting entry into the neighbour's rental unit.
- Notes from the property manager's own notes to file set out their visit to the Tenant on December 17 regarding the incident. On this visit, the Tenant described the incident by setting out they were subject to the neighbour's verbal abuse when they tried to initiate an introduction. The Tenant described instead slapping the neighbour on the arm, above the elbow and below the shoulder.

In the hearing, the Landlord set out they did not call the police because the neighbour did not want to proceed on this matter in that fashion, even after the Landlord strongly suggested they contact the police. The Landlord was also notified of this incident by the building caretaker.

In response to the Landlord's documented evidence and what they heard in the hearing, the Tenant provided that one of the witnesses who reported was an "illegal" who was not authorized to live in the building. According to the Tenant, the witnesses and the neighbour are users of heroin and crack. The Tenant also repeated that there was no police report of the incident. Further, there was "never a punch".

The Tenant provided a brief history of their interactions with this neighbour. The neighbour was trying to establish a relationship with the Tenant and acted inappropriately by exposing themselves. The Tenant did not contact the police because of these incidents, trying to be the peacemaker. The Tenant had to "cut ties"; however, they did not describe what this meant. The Tenant described other events in the same building; however, it had been quiet for months.

Analysis

The *Act* s. 56 provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or urgent circumstances. The legislation regarding an order of possession reads as follows:

- 56(1) A landlord may make an application for dispute resolution to request an order
 - (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end tenancy were given under section 47 [*landlords' notice: cause*], and
 - (b) granting the landlords an order of possession in respect of the rental unit.

Following this, s. 56(2) sets out two criteria. First, the Landlord must prove the cause for issuing the Notice. Second, the evidence must show it would be unreasonable or unfair to the Landlord to wait for a set-period Notice to End Tenancy to take effect under a different section of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

- 56(2) . . .
 - (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 landlords of the residential property;

- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlords or another occupant;
- (iii) put the landlords' property at significant risk;
- (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlords' 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 landlords;
- (v) caused extraordinary damage to the residential property . . .

I have considered the evidence of the Landlord concerning the conduct of the Tenant and the incident in question.

I find there is sufficient evidence to show the Tenant was the cause of the incident in question. This was an assault and the Landlord provided evidence from the neighbour who was the victim here. I find this is an action that is specified by s. 56(2) above, particularly subsections (a) (i) and (ii).

The witness statements are credible and what the Tenant provided about an unauthorized resident providing a statement, or those parties' penchant for substance use does not offset what each witness provided in terms of what they observed from the Tenant. While the Tenant emphasized there was no police report, I find this related to their charges against this neighbour involving inappropriate actions where the Tenant also did not inform the police. Also, given the Tenant's history in the building – including other reasons for which the tenancy is set to end on February 28, 2022 – I find it more likely than not that the Tenant's version of the impact of their confrontation with the neighbour is minimized in their description.

In sum, the Landlord's evidence is sourced and there is nothing to detract from their credibility on this particular incident. Further, the Landlord's record is that the Tenant described to them directly in their conversation on December 17 that they had hit the neighbour on the arm. This in itself is an interference or disturbance in that it is unwelcome contact.

From the evidence I am satisfied that the facts prove cause. I find it unfair for the Landlord's to wait for a set-period Notice to End Tenancy to take effect. I find this warrants an expedited end to the tenancy. I so grant an Order of Possession in line with this rationale.

Conclusion

For the reasons above, I grant an Order of Possession to the landlords 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.

Because they are successful in this Application, I grant the Landlord reimbursement of the Application filing fee. Pursuant to s. 72 of the *Act*, I grant the Landlord a Monetary Order for the recovery of the filing fee paid for this application. 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 Small Claims Division of the Provincial Court 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 s. 9.1(1) of the *Act*.

Dated: January 25, 2022

Residential Tenancy Branch