



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* (the *Act*) for:

- an early termination of tenancy and Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord and a co-owner of the subject rental property attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Counsel for the landlord also attended the hearing and provided submissions on behalf of the landlord. The landlord called S.M. as a witness (the "witness"). The witness provided affirmed testimony. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, co-owner, counsel, witness and I were the only ones who had called into this teleconference.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that they are not recording this dispute resolution hearing.

Counsel confirmed the email address for service of this Decision and Order.

Counsel submitted that the tenants were each served with this application for dispute resolution via registered mail on January 13, 2021. A Canada Post registered mail receipt stating same was entered into evidence. Based on the Canada Post receipt and counsel's submissions, I find that the landlord's application for dispute resolution was served on each tenant via registered mail on January 13, 2021, in accordance with section 89(2) of the *Act*. I find that the tenants were each deemed served with the landlord's application for dispute resolution on January 18, 2021, five days after their registered mailings, in accordance with section 90 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to an early termination of tenancy and Order of Possession, pursuant to section 56 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

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

The landlord provided the following undisputed testimony. Monthly rent in the amount of \$1,600.00 is payable on the first day of each month. A security deposit was not paid by the tenants to the landlord. A written tenancy agreement was not signed by the parties.

The landlord testified that he is seeking an emergency end to tenancy following a threatening altercation between the tenants and a process server (the witness) hired to serve the tenants with a Notice of Inspection.

The witness testified that he is a process server and was hired by the landlord to serve the tenants with a Notice of Inspection on December 7, 2021. The witness testified that on December 7, 2021 he attended at the subject rental property and knocked on the door to serve the tenants with the Notice of Inspection. The witness testified that no-one answered the door, so he proceeded to post the Notice of Inspection on the door. The witness testified that while no one answered the door, he could hear one of the tenants

yell: “get the fuck out of here or you will get a beat down”. The witness testified that he responded: “if that’s [tenant F.K.], I’d like to speak to you”. The witness testified that tenant F.K. responded “if you try to come in here, it’ll be your last day on earth”.

The witness testified that after receiving the death threat, he proceeded to walk back to his vehicle. The witness testified that to get back to his vehicle he had to walk past two windows in the subject rental property. The witness testified that as he walked back to his vehicle, he heard tenant F.K. continue to make threats regarding bodily harm. The witness testified that the tenant then brandished a firearm at him through a window as he walked by. The witness testified that he then told tenant F.K. that he was calling the R.C.M.P. The witness testified that F.K. then told him he was “a dead man”.

The witness testified that he then called the R.C.M.P. who attended at the subject rental property and de-escalated the situation. The witness testified that the R.C.M.P. told the witness to have the R.C.M.P. attend at the subject rental property for the December 15, 2021 inspection and any time the tenants were served because of the threat of violence. Counsel submitted that the police attended at the subject rental property on December 15, 2021 for the inspection. Photographs of the police attendance were entered into evidence.

The witness testified that on December 8, 2021, tenant F.K. left three threatening voice messages on his phone. The landlord entered the voice messages into evidence, but the recording would not play. Counsel for the landlord played the voice messages in the hearing. I allowed the landlord 24 hours to re-upload the voice messages in another format, which counsel did shortly after the hearing.

The voice recordings state:

- “...I believe you know where I live, I want to know where you live. I’m not comin’ knocking on your fucking door at nine o’clock at night- see how you like it cock sucker.”
- “...My home is my castle buddy. You fucking come here you better be prepared to go to war. Don’t ever come here again. This is the last time I’m calling you man. Come here again you want to go to war you better come prepared to fucking battle.”
- “Ya there ah [witness name] I’m in the process of filing with the tenancy act. If you come by here on Wednesday December 15 your going to be in a whole hell

of a lot of fucking shit man. Don't even think about it. You wanna play. We'll fucking play man. I'm filing right now fucking cock sucker. Word is."

The tone of the messages is confrontational and aggressive.

The landlord provided the following undisputed testimony. Prior the December 7, 2021 incident, tenant F.K. has been highly aggressive and threatening. The subject rental property is a house on a five-acre farm. The farm is not part of the tenancy, and the landlord has farm workers coming and going. The farm and the subject rental house share an access driveway. In November 2021 tenant F.K. parked diagonally across the shared access driveway preventing access to the farm. The landlord and the landlord's brother attended at the subject rental property and asked tenant F.K. to move his vehicle over to the side to allow access. Tenant F.K. refused.

The landlord provided the following undisputed testimony. The landlord informed tenant F.K. that if he did not move his vehicle, he would hire a tow truck to move it. Tenant F.K. again refused to move his truck. The landlord hired a tow truck. Once the tow truck arrived tenant F.K. became aggressive and threw racial slurs at the landlord. Tenant F.K. then went inside the subject rental property and came back outside with his hand in his hoodie pocket holding what appeared to be a gun and lunged at the landlord's brother. The landlord stepped between them and the landlord and his brother backed off. After witnessing the above, the tow truck driver returned to his vehicle and called the police who attended and de-escalated the situation. Tenant F.K. then moved his vehicle to allow access to the farm. The police told the landlord not to attend at the subject rental property without police presence.

Counsel for the landlord submitted that tenant F.K. is highly volatile and violent and possess a significant threat to the landlord and all others who attend at the property, including the farm workers.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause. 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.

An early end of tenancy is an expedited and unusual remedy under the *Act* and is only available to the landlord when the circumstances of the tenancy are such that it is unreasonable for a landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the *Act* for cause. At the dispute resolution hearing, the landlord must provide convincing evidence that justifies not giving full notice.

I accept the landlord's undisputed testimony that tenant F.K. acted in a threatening manner towards the landlord and his brother in November of 2021 while holding a gun in his pocket.

I accept the witness's undisputed testimony that the tenant F.K. uttered death threats to the witness and threatened the witness with a gun while the witness was acting as an agent of the landlord. I find the witness's testimony is supported by the threatening messages left on the witness's voice messaging system.

I find that in uttering threats and making threatening motions towards the landlord and the witness with a gun, tenant F.K. significantly interfered with and unreasonably

disturbed another occupant or the landlord of the residential property and engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord. Section 1 of the *Act* includes an agent of the owner in the definition of landlord. I find that the witness meets the definition of landlord because he was acting as an agent of the owner/landlord at the time of the altercation.

I note that the uttering threats is an offence in the Criminal Code of Canada. Given the deadly consequences of gun violence and the tenant's aggressiveness to the landlord and an agent of the landlord, I find that it would be unreasonable and unfair to the landlord and the landlord's agents to wait for a Notice to End Tenancy under section 47 of the *Act*. I find that it would be unreasonable because serious bodily harm could occur to the landlord or the landlord's agents at the hands of tenant F.K. in the interim. I therefore grant the landlord a two-day Order of Possession.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 56 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a Monetary Order to the landlord in the amount of \$100.00.

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 01, 2022

Residential Tenancy Branch