



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was scheduled to deal with a landlord's application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act.

Both the landlords and the tenant appeared at the hearing. The landlords were assisted by their son and the tenant was assisted by an Advocate. The parties were affirmed and the parties were ordered to not make an unofficial recording of the proceeding.

I confirmed the landlords sent their proceeding package and evidence to the tenant via registered mail on March 4, 2022 and the tenant signed for the registered mail on March 15, 2022. Having been satisfied the tenant was duly served with notification of this proceeding, I admitted the landlord's hearing materials into evidence. The tenant acknowledged that he did not submit any evidentiary material prior to the hearing and that he intended to provide his position orally during the hearing.

Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Issue(s) to be Decided

1. Have the landlords established that the tenancy should end early and be provided an Order of Possession under section 56 of the Act?
2. Award of the filing fee.

Background and Evidence

The parties executed a written tenancy agreement that provides for a month to month tenancy that commenced on November 15, 2018. A security deposit of \$280.00 was required and the rent was originally set at \$570.00 payable on the first day of every month. The rent has increased since the tenancy started and the tenant stated it is currently \$588.70 per month. The rental unit was described as being one of three living accom0odation units in a building owned by the landlords. The rental unit is a one bedroom unit located on the upper floor. There is another unit located on the upper floor and one unit located on the lower level. All of the units in the building are tenanted.

Below I have summarized the parties' submissions with respect to an incident that occurred at the residential property on December 6, 2021.

Landlord's position

The landlords submitted that in January 2022 they were notified by a police officer that the tenant was charged with assaulting the tenant of the lower unit with a weapon (the other tenant is herein referred to as "R" for privacy purposes) on December 6, 2021. The landlords explained the police informed the landlord that the police were having difficulty making contact with the tenant. The landlords offered to let the police enter the rental unit but the police declined and stated they would monitor the tenant's whereabouts.

After hearing of this from the police, the landlords called R. The landlords heard from R that he was hit over the head and when his back was turned. R went to the police and to the hospital after being assaulted by the tenant. Further, since the assault R tries to stay away at work as much as possible as he is uncomfortable being at home while the tenant still resides at the property.

Below, is a written statement from R (with the name of the parties omitted by me for privacy reasons):

On December 05/2021 at 9:30am ish, I was on my way to work. When I opened the door to go to my car, [redacted] was standing in my way with a scoop of snow in his hand. He called me a derogatory name and proceeded to throw the snow at me and into my apartment. As I was trying to close the door, slipping from all the snow, he hit me over the head with the shovel. I managed to get the door half way closed before he started pushing on the door to try and hit me again. After he left from my front door I proceeded to get into my car and report the incident to the RCMP. They recommended I see a doctor which I then headed to the hospital. Although the Dr said I would be fine, I did see stars and had blurry vision for the next few days.

This whole incident stems from a previous altercation a year ago where I caught [redacted] cheating while playing poker. Ever since the poker game incident he now parks where I used to park and have always parked since I moved in. He steals my outdoor patio furniture so that I can't sit down and relax outside and brings it up to his apartment. If my bathroom window is too far open, he will slam it shut from the outside. I put a lock on the bathroom window so the user can't open the window to far to resolve the issue. Then I moved the patio furniture over around the other side of the building but then he started dumping water on me from his window above. He put dog feces on the outdoor table where I sit, the same table he kept stealing, it is relentless and on going. I had to put a camera up to watch my car which he was always dumping garbage and cigarette butts on the windshield (The camera did the trick and he stopped putting stuff on my wind shield). He is causing damage to my apartment and has already flooded my place.

I have reported every incident to the landlords and followed their direction to try and resolve this ongoing feud which I am so tired of. I find [redacted] dangerous and he has a propensity for violence first, before acting logical. [redacted] will have no problem getting behind the wheel of a vehicle after drinking alcohol and smoking weed. There are so many other things to mention, but I am to old for this stuff and want to permanently resolves the issue which has now gotten to the point where one of us has to go unfortunately.

The landlords also investigated the tenant's conduct at the property by speaking with former tenants of the property and heard that other tenants left because of the tenant's conduct at the property.

The landlords further submitted that they are uncomfortable entering the tenant's unit since the assault and have gone inside the rental unit only once and with the accompaniment of a police officer who was there to keep the peace. The landlords no longer send tradesmen to work on the rental unit, even though the rental unit has suffered damaged and requires repairs, so as to protect others from the tenant's aggressive conduct.

On January 26, 2022 the landlords issued a *One Month Notice to End Tenancy for Cause* ("One Month Notice") to the tenant due to the incident of December 6, 2022; however, the tenant filed to dispute the One Month Notice and the hearing is set for May 2022. The landlords submitted that they informed R that the hearing was not until May 2022 and R's response was that he could not continue to live at the residential property while the tenant is still there unit May 2022 which caused the landlords to file this Application for Dispute Resolution seeking to end the tenancy on an expedited basis.

The landlords submitted they have lost other tenants and are about to lose another one due to the tenant's aggressive conduct and it is the tenant that should be required to vacate.

The landlords provided a written statement of R along with a copy of a letter addressed to R by the British Columbia Prosecution Service on February 2, 2022 inviting R to write a victim impact statement. The landlords also provided a printout from court services to demonstrate the tenant was charged with assault with a weapon with respect to an incident on December 6, 2021. The landlord's also provided their own written statement.

In the event the landlords are successful, the landlords requested an Order of Possession effective as soon as possible or the end of the month.

Tenant's position

The tenant testified that he was shovelling snow in the driveway of the property and the tenant acknowledged that he "pushed" R with a snow shovel on December 6, 2021 but only after R allegedly called him derogatory names and R came at the tenant with his fists up. The tenant stated R ended up slipping and falling on his rear end. The tenant stated that he then ran for his unit and locked the door. The tenant saw R drive away approximately 10 minutes later and the tenant believes R went to the police because R said he was going to call the police.

The tenant acknowledged that it wasn't until January 5, 2022 that he finally spoke to the police. The tenant explained the delay was likely the result of the tenant not having a phone and because he often sleeps during the day. A police officer eventually approached him in the parking lot when the tenant went out. Despite denying the assault upon R, the tenant was charged with assault with a weapon. The tenant acknowledged he failed to tell the police that R came at him with his fists raised.

The tenant stated that he and/or his lawyer have been to court three times with respect to this incident but the matter has not yet been concluded.

As far as motivation for R to approach the tenant aggressively, the tenant speculated that it was likely due to the tenant telling R that he has no friends and because R lost a poker game in the past.

The tenant claims that the version of event put forth by R does not match that reflected in the police report. The tenant acknowledged his lawyer has a copy of the police report but that the tenant did not submit/serve it as documentary evidence for this proceeding. Nor, did the tenant orally describe the inconsistencies between the police report and R's written statement submitted for this proceeding.

Since the incident of December 6, 2021 there have no other incidents with R.

The tenant called another tenant in the building as a witness (referred to as CV).

CV was affirmed and testified that he did not witness the events of December 6, 2021 as he was out of town at the time.

CV testified that he has not witnessed the tenant be aggressive. CV testified that he has not seen R be aggressive either although CV believes R is mentally unstable and paranoid because R set up video cameras. CV believes the feud between R and the tenant started after a poker game.

In asking questions of CV, the tenant responded, on two occasions. I instructed the tenant to cease doing so.

The tenant is of the position he has not done anything wrong to warrant an eviction or the criminal charge as R was the aggressor and the tenant was only trying to protect himself. The tenant argued he should not be evicted based on merely an allegation that has not been proven in court.

The tenant requested that, should the landlords succeed in this application, he be provided at least 30 days of time to vacate the rental unit, or the end of April 2022.

Analysis

Under section 56 of the Act, the Director, as delegated to an Arbitrator, may order the tenancy ended earlier than if the landlord had issued a One Month Notice to End Tenancy for Cause ("1 Month Notice") and grant the landlord an Order of Possession. The landlord must demonstrate cause for ending the tenancy and that it would be unreasonable to wait for a 1 Month Notice to take effect.

Below I have reproduced section 56 of the Act:

- 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 the tenancy were given under section 47 [*landlord's notice: cause*], and
 - (b) granting the landlord an order of possession in respect of the rental unit.
- (2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,
- (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, and

(b) 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.

[My emphasis underlined]

Section 47 of the Act provides a mechanism for landlords to bring a tenancy to an end where the tenant has given the landlord cause to end the tenancy by issuing a One Month Notice. A notice given under section 47 affords the tenant ten days to dispute the One Month Notice or at least one full move to vacate the rental unit. If a tenant files to dispute a One Month Notice, the parties must wait for the hearing to conclude.

Section 56 also requires that the tenant has given the landlord cause to end the tenancy; however, the seriousness of the alleged offence(s) or conduct permits the end to the tenancy without the time afforded to the tenant under section 47. Accordingly, section 56 is intended to apply in the most urgent and severe circumstances and are processed as an “expedited hearing”.

As provided under Residential Tenancy Policy Guideline 51: *Expedited Hearings*, expedited hearings are reserved for “... circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant...”

In the matter before me, the landlords did serve the tenant with a One Month Notice in response to the incident of December 6, 2021. Considering the tenant disputed the One Month Notice and a hearing is scheduled for May 2022, I accept that if the circumstances are so urgent and severe, it may not be reasonable to wait for the One Month Notice to be heard and it is reasonable for the landlords to proceed to make an Application under section 56 of the Act. Therefore, I find that the landlord's issuance of a One Moth Notice does not preclude the landlord from making an application under section 56 and I continue to consider the remedy requested.

As for the incident that occurred on December 6, 2021, the landlords allege the tenant hit R in the head with a snow shovel and points to R's written statement, a printout from court services showing the tenant has been charged with “assault with a weapon”, and a letter from the Crown Prosecutor's office inviting R to make a Victim Impact Statement concerning the incident of December 6, 2021. The tenant acknowledged pushing R with a snow shovel after R allegedly approached the tenant with fists up and the tenant points to the fact he has not been convicted of the crime in court. The tenant also called

a witness; however, the witness did not witness what occurred on December 6, 2021 and characterized both R and the tenant as not aggressive. As it is undisputed that an altercation occurred on December 6, 2021 that involved violence, or the threat of violence, I find the testimony of CV not particularly helpful in resolving this case.

Residential Tenancy Policy Guideline 32: Illegal Activities provides information and policy statements with respect to ending a tenancy due to an illegal activity. Below, I have provided excerpts from the policy guideline:

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

The test for establishing that the activity was illegal and thus grounds for terminating the tenancy is not the criminal standard which is proof beyond a reasonable doubt. A criminal conviction is not a prerequisite for terminating the tenancy. The standard of proof for ending a tenancy for illegal activity is the same as for ending a tenancy for any cause permitted under the Legislation: proof on a balance of probabilities.

Rule 6.6 of the Rules of Procedure also provides for the burden of proof, as follows:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Given Rule 6.6 and policy guideline 32, the landlords bear the burden of proof. That burden is on the balance of probabilities and not the higher criminal standard of beyond a reasonable doubt.

As for assaulting a person, I was provided a court service print out in support that an assault with a weapon is a crime. As such, I find I am satisfied such an act is illegal activity. It was also undisputed that the incident of December 6, 2021 occurred on the residential property. Accordingly, I turn my mind to the disputed evidence that the tenant assaulted R.

On a balance of probabilities, I find I prefer the landlord's submissions that the tenant was the aggressor toward R and assaulted R with a weapon, considering the following factors:

- It is undisputed that it was R that went directly to the police after the incident occurred.
- The police attempted to make contact with the tenant regarding the incident of December 6, 2021 over a long period of time and the tenant never did answer the door for the police and it was only when the tenant left his unit did the police make contact with the tenant. I find the tenant's conduct consistent with avoidance with the police over the matter and inconsistent with the tenant's position he was merely defending himself from R.
- The tenant, admittedly stated during the hearing that he did not inform the police that R came at him with fists raised and I find the omission of that statement to the police is inconsistent with the position the tenant is putting forth now.
- The tenant claims that the version of events put forth by R does not match what is reflected in the police report that the tenant's lawyer has; yet, the tenant did not submit the police report into evidence or otherwise identify the alleged inconsistencies.
- The tenant has been charged criminally with assaulting R with a weapon after the police investigated the incident and the circumstances were reviewed by the Prosecutor's office.

Given the seriousness of assault with a weapon on the residential property toward another tenant of the property, I accept that it unreasonable to expect R and the landlords to wait for a One Month Notice to be heard in May 2022. Therefore, I grant the landlord's request to end the tenancy early and obtain an Order of Possession under section 56 of the Act.

In the circumstances before me, I find it appropriate to grant the landlords an Order of Possession effective as soon as possible. I provide the landlords an Order of Possession effective two (2) days after service upon the tenant. Accordingly, the tenancy ends two (2) days after service of the Order of Possession.

I further award the landlords recovery of the \$100.00 filing fee they paid for this Application for Dispute Resolution. The landlords are authorized to deduct \$100.00 from the tenant's security deposit in satisfaction of this award.

Conclusion

The landlord's application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act is granted. The tenancy is ended two (2) days after service of the Order of Possession upon the tenant.

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: March 29, 2022

Residential Tenancy Branch