



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was reconvened for a matter previously heard on May 5, 13, and 16, 2022, regarding the Landlords' application under the Residential Tenancy Act (the "Act") for an early end to the tenancy pursuant to section 56.

The Landlords, the Tenant, and the Tenant's counsel SK attended this final hearing, which took place on May 20, 2022.

Procedural History

The Landlords originally made this application on April 9, 2022, as a result of an incident that occurred on April 4, 2022, during which the Tenant is alleged to have physically assaulted one of the Landlords, DC.

The Tenant was represented by counsel throughout this entire dispute resolution proceeding. The Landlords were self-represented.

On May 5, 2022, the Landlord DC gave her testimony first, and was subject to extensive cross-examination by the Tenant's counsel SK.

On May 13, 2022, the hearing was briefly reconvened and then adjourned to May 16, 2022.

On May 16, 2022, DG and BP were called by the Landlords as witnesses during a continuation of this hearing. Both were cross-examined on their testimony by the Tenant's counsel. The Landlord BB gave his testimony and was subject to cross-examination by the Tenant's counsel.

On May 20, 2022, the Tenant made her submissions and answered questions posed by the Landlords. The parties then presented their closing arguments.

All attendees who gave evidence in this dispute resolution proceeding did so under oath.

Preliminary Issue – Admissibility of Certain Evidence

The Landlords initially objected to the admissibility of two video recordings of an incident that occurred at the rental unit on March 25, 2022 (collectively, the “Video Recordings”), because they had not been received by the Landlords in USB format. The Tenant’s counsel indicated that the Video Recordings were sent to the Landlords as email attachments on May 2, 2022. The Landlords acknowledged they discovered the email with the Video Recordings in their spam folder on May 3, 2022. Pursuant to sections 71(2)(b) and (c) of the Act, I find the Landlords to have been sufficiently served with the Video Recordings on May 3, 2022.

During closing argument, the Tenant’s counsel SK objected to the written statements of the Landlords’ movers, BF and MH, on the basis that they are not sworn statements and that BF and MH were not called to testify as witnesses during the hearing. I note that after the hearing was adjourned for the first time, DC had expressed concern with her witnesses’ continued availability. In the end, the Landlords only called DG and BP as their witnesses.

Section 75 of the Act states as follows:

Rules of evidence do not apply

75 The director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be

- (a) necessary and appropriate, and
- (b) relevant to the dispute resolution proceeding.

I find it is undisputed that BF and MH were with DC in the garage when the physical altercation between the Tenant and DC occurred on April 4, 2022. That physical altercation is at the centre of this dispute, and both BF and MH were first-hand witnesses. As such, I find the witness statements of BF and MH to be necessary, appropriate and relevant to this dispute resolution proceeding. Accordingly, I admit their statements as part of the evidentiary record.

For greater certainty, I have not determined any documentary or digital evidence submitted by either the Tenant or the Landlords to be inadmissible for the purpose of this application.

Issue to be Decided

Are the Landlords entitled to end the tenancy early and an Order of Possession pursuant to section 56 of the Act?

Background and Evidence

While I have turned my mind to all the evidence and testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on January 1, 2022 for a fixed term ending on December 31, 2022. The Tenant was entitled to early possession of the rental unit on December 29, 2021 and moved into the rental unit on December 30, 2021. Monthly rent is \$2,700.00, due on the first day of each month. The Tenant paid a security deposit of \$1,350.00, which is held by the Landlords.

The Landlords are non-commercial landlords who own the rental unit as their seasonal home. The Landlords say that the rental unit was originally advertised as unfurnished, but the parties agreed to have the rental unit furnished until April 2022, to allow the Tenant some time to purchase new furnishings.

The Tenant testified she did not request for the rental unit to be furnished. The Tenant testified she received an email from the Landlord DC on December 7, 2021, with an offer to rent the unit furnished, at an additional cost of \$200.00 per month. There was to be exclusions such as artwork and outdoor items.

The parties subsequently entered into a non-standard residential lease agreement dated December 11, 2021 (the "Lease Agreement"). The Landlords submitted a copy of the Lease Agreement into evidence. Paragraph 8 of the Lease Agreement lists the furnishings to be included in the rental unit, with a note that the "Majority of outdoor furniture will be removed in Spring (April 2022)" and "Some personal artwork will be removed".

The Landlords submitted an email dated February 28, 2022 from the Tenant, which states in part: "Regarding your question about the furniture- I would like it moved out as soon as possible. June will not work for me as a move out clean and furnace/ducts/vent cleaning and sanitization needs to be completed sooner than later, followed by a condition report for record."

In the first of two written statements submitted by the Tenant, dated April 13, 2022 and May 2, 2022 respectively, the Tenant describes receiving a series of emails from the Landlords in late February and March 2022 (at paragraphs 7 to 18). These emails from the Landlords were primarily for setting dates to remove furniture from the rental unit and to deliver and install new appliances. The Tenant testified she rearranged her schedule and removed fridge and freezer contents multiple times in order to accommodate the dates, only to have no one show up.

I note the Tenant did not submit copies of all emails referenced in her first statement at paragraphs 7 to 18. I have reviewed the emails attached as exhibits C, D, E, and F to the Tenant's first statement. Based on these exhibits, I find the Landlords have had to reschedule with the Tenant several times due to changing delivery estimates. However, I do not find the Landlords to have failed to communicate with the Tenant in a timely manner. Rather, I find the Landlords were actively trying to communicate what information they had with the Tenant. For example, in an email dated March 14, 2022, DC writes: "I should have an estimate of a delivery time window this Thursday according to the company. I will reach out then to confirm the time window." In a follow-up email dated March 16, the Landlords write: "I do not have the exact delivery window yet. I will let you know as soon as I have that information." In a further email dated March 17, 2022, the Landlords write: "The delivery company just contacted me and delivery of the new kitchen appliances will now take place on Friday, March 25, 2022. We have requested a possible same day install and are awaiting confirmation."

In addition, I find the Tenant was reluctant to have the Landlords' agents attend at the rental unit in her absence, even where notice had been received. For example, in an email dated March 16, 2022, the Tenant states: "The removal and installation dates do not work for my schedule. Dates that do work are March 27 through to the 30 and April 1-2". Elsewhere in her email, the Tenant states: "I am not comfortable having unknown cleaners in my space as I do not know if they are bonded, insured or what type of products will be used."

I find the Tenant's reluctance was met by frustration on the part of the Landlords, whose email response on March 16, 2022 was: "Thank you for your note. [...] Pursuant to the

terms of the Act, your presence during the delivery and installation is not required. The Landlord, or appointed agent of the Landlord, can access the property with due notice. All due notice and reason for entry has been provided to you and has been acknowledged by you.”

In emails dated March 17, 2022 and March 23, 2022, the Landlords sent final confirmation to the Tenant regarding the appliance delivery scheduled for March 25, 2022. The Tenant testified she did not see these emails until the evening of March 25, 2022.

It is undisputed that the Landlord’s agent DG, the appliance delivery person, and an appliance installer BP attended at the rental unit on March 25, 2022, but were unable to complete the appliance delivery or installation.

DG and the appliance installer BP each provided written statements describing what happened on March 25, 2022.

DG explained the Landlords had requested for him to supervise the delivery and installation of new appliances at the rental unit on March 25, 2022. DG testified he picked up a key from the property manager on his way, in case the Tenant was not home during the scheduled time frame. DG testified he was told the Tenant was aware of his arrival and that he would have permission to enter. DG testified when he arrived, he knocked on the door and tapped on the glass portion of the door, but there was no answer. DG testified he made noise and called out while on the rental property, but did not hear a response. DG testified the lights appeared to be off inside the rental unit. DG stated that while he was waiting for the delivery and installer to arrive, he did some work in his truck, charged his phone by the front deck, and checked around the property. DG testified he owns a pest control company and was looking to see if the trees on the rental property needed treatment. DG testified when the appliance installer BP arrived, they chatted for a bit and decided to uninstall the dishwasher first to save time.

BP submitted as follows (portions redacted for privacy):

On March 25, 2022 I was hired by [BB] & [DC] to install appliances at [dispute address] in [dispute city]. When I arrived their assistant [DG] was already on site. [DG] told me he had knocked on the door and nobody answered. He was sitting on front deck waiting for delivery. I asked him if we could go inside and start uninstalling the old appliance {He agreed}. [DG] again knocked on the door and nobody answered. He then proceeded to unlock the door as requested by the

home owners. [DG] then called out to see if anyone was home before we would enter. Tenant then came out from some room in the back with a “smirk” on here (sic) face and proceeded to push DG out of the door way and said “Get out of my house”; then closed the door. I had to step back quickly so [DG] would not of (sic) been pushed into me. Because of the “smirk” on her face we thought she may have been joking. She never did come back to the door to let us in. That’s when we knew it wasn’t a joke. [DG] then called home owners to see what to do. In the mean time the tenant called the police. I’m not sure how long it was until the police officer showed up. We explained everything to the office (sic); why we were there. The officer talked with the tenant but had no success reasoning with her. I then left the home without being able to complete my work.

Both BP and DG gave verbal testimony in addition to their written statements.

During his testimony, DG confirmed he had met the Tenant on two previous occasions. The first time was when DG was asked by the Landlords to show the rental unit to prospective tenants. DG testified the Tenant was one of several people who attended the showing. DG stated the Tenant came in, introduced herself to him, and they had a “good chitchat”. DG testified the second time he met the Tenant was when the Landlords contracted him to investigate a mouse problem alleged by the Tenant. DG stated he attended the rental unit to set traps and spoke with the Tenant. DG stated he did not see any mice on the rental property at that time.

When questioned by the Tenant’s counsel as to whether DG had been “assaulted” by the Tenant, DG’s testimony was that he was “escorted” out of the house. DG stated that the terminology has changed so much regarding what constitutes an assault. DG testified the contact was “firm”, “directional”, and he “knew the Tenant wanted [him] out”.

Neither DG nor BP knew why the Tenant refused the appliance delivery and installation.

At paragraph 15 of her first statement, the Tenant describes the March 25, 2022 incident as follows (portions redacted for privacy):

On March 25, 2022 the Landlords’ agent showed up at my home, looked in my windows and sat on my patio, periodically looking around and in the property. After one hour [the Landlord’s agent DG] entered my home, without a mask. Another male was with him laughing. I told him to leave as I did not see their email of March 17, 2022. He spent over an hour sitting on my patio and even

plugged his phone charger into a power socket on my patio using power that I pay for to charge his phone.

The Video Recordings submitted by the Tenant are brief and show DG and BP walking up to the front door of the rental unit on March 25, 2022. DG knocked, then proceeded to unlock the door. DG called out, “Just confirming... hellloooooo”. The Tenant appeared and repeated “Get out of my house” three times, pushing DG out with one hand while slamming the door with her other hand. DG can be heard, shocked and confused, saying, “Hey...?” and “W-Why...?” The Tenant is then seen with her back to the door calling someone on the phone, presumably the police.

I find that the interaction was very brief. I find that the Tenant pushed DG out the door with one hand as she told them to get out. I find the Tenant did not scream at DG and BP.

I note that for the reasons given below, I do not find the Tenant’s explanation for turning DG away to be credible.

First, the Tenant did not provide any compelling reason to explain why she did not check her email at all after March 16, 2022 and before the evening of March 25, 2022. The Tenant had been communicating with the Landlords via email about arranging dates since February 28, 2022. The Tenant was aware that the Landlords were in the process of obtaining time-sensitive information to forward to her—that is, confirming a delivery date and window. I find, on a balance of probabilities, that the Tenant was reluctant to communicate with the Landlords via email after March 16, 2022, perhaps due to the parties’ disagreement about delivery dates and the Tenant’s presence during the delivery.

Second, DG was not a stranger to the Tenant. I find the Tenant did not make any attempt to speak with DG or to clarify the situation before calling the police on March 25, 2022.

Based on the foregoing, I find on a balance of probabilities that the Tenant’s refusal of the appliance delivery and installation on March 25, 2022 was deliberate.

The Landlords subsequently sent an email to the Tenant regarding the “refusal of major appliances delivery and costs to be sought” dated March 25, 2022.

On March 26, 2022, the Tenant sent an email to the Landlords, advising that she did not receive their previous emails about the latest change to the delivery date and that she does not accept email as proper service. I note the parties had listed their respective email addresses at paragraphs 65 and 66 of the Lease Agreement, though for some reason for the Tenant it is stated to be contact information “[a]fter this tenancy has been terminated”.

The Landlords testified that as a result of the Tenant’s request for all further communications to be received via written notice, they hired a process server, RM.

The Landlords submitted a copy of RM’s sworn affidavit of service dated April 1, 2022 (the “Affidavit of Service”). The Affidavit of Service indicates that RM posted four notices to the Tenant’s door on March 28, 2022. One of the notices attached as Exhibit D to the Affidavit of Service (the “Notice of Furnishings Removal”) is dated “SATURDAY, APRIL 2, 2022” at the top left-hand corner, but states as follows in the body of the notice:

RE: Notice of Furnishings removal and premise cleaning, Monday, April 4, 2022

Dear [Tenant]:

As per your email request and the April 1, 2022 conclusion of the furnished rental component of your contract, all furnishings, including those within the home, garage and yards, will be removed from 9 to 2 p.m. on Monday, April 4, 2022 via a professional moving company.

As per your request, we are sourcing a cleaning company to do a move out deep clean, which will be paid by the landlord after the contents are removed.

(emphasis added)

The Tenant submitted she did not see the Notice of Furnishings Removal until March 30, 2022, and that no one attended at the rental unit on April 2, 2022. However, I find the Notice of Furnishings Removal indicates that movers will attend at the rental unit on April 4, 2022.

In addition, the Landlords submitted a copy of an email they sent to the Tenant on April 1, 2022, to remind the Tenant of the furnishings removal that will take place on April 4, 2022. The Tenant’s evidence is that she did not see this email in time.

The Landlords also provided a written notice to the Tenant of their intention to list the rental unit for sale. That notice was one of the notices posted to the Tenant’s door by

the Landlord's process server RM on March 28, 2022, and is attached as Exhibit C to the Affidavit of Service.

On April 4, 2022, the Landlords attended at the rental unit with their hired movers, BF and MH. The following is an excerpt from DC's written statement, in which she describes what transpired on April 4, 2022 (portions redacted for privacy):

[...] 8. On Monday, April 4, 2022, the Landlords first met the representatives from [name] Moving company, owners [BF] and [MH] (the "Movers") at the entrance to [dispute address] to escort them onto the property. Due to the slope of the driveway, the moving truck was parked on the road, next to the driveway.

9. Upon arrival at approximately 10:25 a.m, after I parked my SUV on property in front of the Home, the Tenant opened the screen doors facing me as I sat in the car and yelled "You need a court order to be here" and "Get the f—k (expletive) off my property" while displaying her middle finger. This action occurred repeatedly and aggressively, which was highly disturbing to me, my husband [BB] and my two small [dogs] sitting in our SUV.

10. This was only my second in-person meeting with the Tenant, after the house walkthrough on December 30, 2021 at the start of the January 1, 2022 tenancy.

11. Standing away from and at the various entrances at the front of the Home, I stated to the Tenant that she knew that we would be on site this morning to remove the furniture as she was served written notice, and that the contract for furnishings had expired April 1, 2022. [...]

12. The Tenant continued to be extremely aggressive, and verbally abusive, swearing at us, and displaying the finger to me and my husband, seated in the passenger seat. As my husband is physically disabled, he remained in the car for his safety.

13. The Tenant filmed me as I stood on the deck stairs to speak with her calmly, with the Movers standing near by on the driveway. They were witness to the Tenant's actions, statements and aggressive behaviour and were with me at all times [...]

14. As the tenant was filming me at all times, I also attempted to capture an image of the tenant's actions with my phone, taken at a distance from the home's entrance.

15. I spoke to the Movers and stated that we would not be removing the majority of furnishings inside the Home that were included in the lease due to the Tenant's aggressive actions in front of us.

16. There were items of outdoor furniture strewn out in front of the Home and in the weather elements which was concerning to me as it was pouring rain. One item, a large gas firebowl was left out in the rain in front of the garage man door without a cover and other items were scattered throughout the property, driveway and backyard.

17. Concerned for my personal property and goods, which were not included in the furnished portion of the Lease (but were noted within the Lease to be removed in April 2022 by the Landlord), I opened the garage door to see if my other personal goods/items had been damaged. I indicated to my movers that two larger items (Weber BBQ and portable hot tub box) located along the side of the garage were excluded and should be removed for safekeeping.

18. As I was pointing these two items to the movers, with my back half-turned away from the garage side door to the Home, the door was suddenly thrown open and the Tenant physically jumped on me from the home's stair riser above the garage floor, violently grabbing and pushing/dragging me approximately three feet next to the movers who were then standing next to me. She was again screaming at me and swearing.

19. It was a sudden, violent and physical attack, where I suffered a strong and forceful blow to my upper neck, shoulder and upper back/shoulder blade and what felt like burning skin scratches which caused me to recoil dramatically and stumble backward. Thankfully I did not strike my head.

20. The actions during the attack were like being choked or throttled, as well as dragged.

21. During the physical attack, the Movers witnessed the assault, and screamed and yelled at the tenant many times to "stop assaulting her ([DC]), "let her go" and "you are assaulting her."

22. As the Tenant is much taller and younger than I am, the injuries were immediately felt and I experienced a sudden burning and pain from my right earlobe, down my jaw, into my right shoulder, shoulder blade and ribcage. I immediately clutched my head and neck area.

23. As the attack was unexpected and a shock, I did not react in any way to defend myself, nor touch the Tenant in any manner.

24. I was visibly shaken as I stood on the driveway next to the garage door. Each of the Movers witnessed the event and asked if I was hurt and that we need to call 911.

25. As I was in shock, I did not witness if the Tenant returned inside the house after the assault.

26. My husband, [BB], also witnessed the attack from the parked car. As he is physically disabled, he was unable to leave the vehicle to assist.

27. Within a few minutes after the shock and assessment of my injuries, I called 911 to report the attack and ask for RCMP support.

28. I stood away from the Home entrances and sought comfort from my husband, who remained in the car with our two small [dogs]. I continued to hold my neck to ease the pain in the neck, jaw and shoulder area. These areas felt severely wrenched. I did become emotional while I waited for the RCMP. [...]

The Landlord BB also provided a written statement dated April 7, 2022 in which he states (portions redacted for privacy):

[...] On Monday, April 4, 2022, at approximately 10:22 am, the Landlords met the representatives from [name] Moving company, ([BF] and [MH], owners) the "Movers" at the entrance of the Home to escort them onto the property. As the driveway is sloped, the moving truck was parked on the road, next to the driveway on the left. It was raining at the time.

On arrival, at approximately 10:25 am, my Wife parked our SUV in the parking spot in front of the home, the tenant immediately opened the screen doors and moved out onto the front deck yelling "Get the f---k off my property" and "You

need a court order.” In addition, she gave us the finger many times and gestured wildly. She filmed us both along with my two small [dogs] who were in the car with us.

We were parked at least 20/22 feet away from the house as there is a designated lot in front of the deck.

My Wife got out of the car and walked up two stairs so she could speak to the tenant, where I heard her tell the Tenant in a calm speaking voice, “[Tenant], you know you have been served with written notice of today’s removal of furnishings as the furnishing contract has expired and you are aware of our arrival on site today. As well, she also stated to the Tenant that “we do have the right as landlords to inspect the property according to the Tenancy Act.”

I also told the Tenant through the open car door window that she was aware of today’s removal of furnishings. Between her swearing at us and declaration of us requiring a court order, I said “No [Tenant], you know why we are here today. We are here as the furnishing contract has expired.” I never left the passenger seat of the vehicle as I cannot walk without assistance.

The Tenant continued to scream that we require a court order and continued to swear and give us the finger. [...]

The Movers witnessed the Tenant yelling at us and filming our actions. My Wife decided that there was to be no removal of the house furnishings included in the rental agreement, as it was a safety risk to ourselves and the Movers.

The outdoor furniture originally stored within the garage, which was not included in the furnishings’ agreement of the Lease (with a note in Lease to be removed April 2022), was located haphazardly over the front deck and in front of the garage. Most concerning, I saw our costly propane firepit was left out in the elements in the pouring rain and was being damaged by exposure and the weather. It was not covered.

[...]

I watched my Wife and the Movers enter the opening of the garage for a few seconds. Suddenly I saw another person’s hand and arm on my wife’s right side of her neck and shoulder and saw my wife’s face wince and head snap backward

and sideways. I then saw the Tenant grab my wife's upper body/shoulder area and violently push her towards the garage door entrance. The Movers were yelling "Let her go. Get your hands off her. You are assaulting her."

I also observed my Wife put up her right hand by her neck to stop the blow but she did not touch the Tenant at any time during the attack from my viewpoint.

The Movers and my Wife were now outside of the garage entrance. I did not see the Tenant leave the garage via the automatic garage door or any other door. As I have a physical disability and health condition which affects my walking, I was unable to assist my wife during this attack.

BF and MH, the movers who attended the rental property on April 4, 2022 with the Landlords, provided written statements dated April 8, 2022. BF's statement contains the following excerpt:

[...] We met with [DC] and her husband and followed them to their house so they could direct us on what contents that would be going (sic). When we arrived we witnessed the tenant of the residence shouting through the front door as we were pointing out what exterior furniture would be coming with us. We proceeded to the garage and DC entered first pointing out a boxed swimming pool. At this moment the tenant open (sic) the door to the garage and lunged (sic) at [DC] cross checking her while screaming "Get the f__k out of my house". We immediately started to retreat from the garage with [DC] as she was shoved 3 more times. As she shoved [DC], [MH] and I stated that what she was doing to [DC] is Assault. To hopefully tone down the tenant so we actually vacate the garage. We immediately stated that would (sic) not be moving or touching any possessions until the police could assist in defusing the situation as the tenant seemed very uncooperative with the move. [...] And no time that I was there did I see [DC] or her husband threaten or curse at the tenant in any manner. [...]

MH's statement contains the following excerpt:

[...] When we arrived, the tenant (name unknown) was at her glass sliding door, holding her phone up as to show us that she was recording. [DC] was then showing us the items from outside that we would be taking while the tenant was shouting illegibly at her through the glass. [DC] then opened the door to the garage to show us what we would be taking from there and when we were inside, the tenant came out of her door screaming "Get the F--- out of my house!" and

started shoving [DC]. I stepped out of the way and the tenant continued to shove [DC] until she was outside of the garage and then closed the garage door. [BF] and I told the tenant that what she was doing was assault but did not get involved any further. At which point (sic), we let [DC] know that we would not removing any items from the property until the police were on the scene. [...] At no point during the altercation did I witness [DC] put her hands on the tenant. I was standing right beside her in the garage and when the tenant started shoving her, she put her hands up to protect her face and made her way towards the exit. [...]

The Tenant describes the April 4, 2022 incident in her written statements as follows:

30. On April 4, 2022, the Landlords came to the Property and parked in such a way that they can look into my home. They had a cube van at the bottom of the driveway with other people that I did not recognize. The landlord [DC] came up to the glass patio door and appeared to be recording video of me inside my house (as I repeatedly told her to leave, get off the property). I told them to leave unless they have a court order. [DC] said, "thank you for that" and then went to her car and used a remote clicker to open the garage door. She then went into the garage with the two strangers and began grabbing boxes to move them without checking to see whose boxes they were.

31. I told them to stop and to leave several times, but they refused to. The Landlord, [DC] then pushed me and ran past me while hitting me, attempting to get into the house through the door in the garage. I protected my head with my right arm, as she tried to get into the house, I grabbed her jacket with my left arm and as she got past me then grabbed the back of her right arm jacket, I turned her around facing the exit of the garage, opened the man-door got her out and closed it once she was out.

[...]

28. When the landlords showed up on April 4, 2022, they had two sketchy looking people and an unmarked van and I was worried they were going to take my things and try to kick me out. At no time did I jump on [DC]. The only time I touched her was when she tried to physically force her way past me to get into the main part of the house. She was trying to hit me to force her way past me so while protecting my head with my right arm I grabbed the arm of her coat with my

left hand and pushed her out the door and closed it. I have included a picture of the bruising where she hit me in my previous statement.

Upon reviewing the sum of the evidence and the parties' testimony, I find I prefer the evidence of the Landlords over that of the Tenant. I find DC's verbal testimony regarding how the events unfolded on April 4, 2022 to be clear and consistent with her written statement, the written statements of the Landlords' movers BF and MH, and the written statement and testimony of the Landlord BB. I find DC's testimony did not falter when subject to lengthy cross-examination by the Tenant's counsel. The Tenant's counsel also questioned whether BB witnessed the physical altercation at all. I find that, based on where he was sitting in the car, BB was able to see some, but not all of what was happening between the Tenant and DC. I find BB acknowledged this in his written statement. Thus, while I give some weight to the corroborating witness statements of BF, MH, and BB, I give the most weight to DC's verbal testimony and her written statement regarding the physical altercation.

In contrast, I find the Tenant's descriptions of the physical altercation to be less credible and occasionally misleading. For example, the Tenant also made the following written statements:

6. [...] the events of April 4, 2022 when the Landlords showed up at the Property and [DC] physically forced her way into my home and repeatedly hit me as I was trying to get her to leave my home. (emphasis added)

[...]

31. I told them to stop and to leave several times, but they refused to. The Landlord, [DC] then pushed me and ran past me while hitting me, attempting to get into the house through the door in the garage. I protected my head with my right arm, as she tried to get into the house, I grabbed her jacket with my left arm and as she got past me then grabbed the back of her right arm jacket, I turned her around facing the exit of the garage, opened the man-door got her out and closed it once she was out. (emphasis added)

During the hearing, DC questioned whether the Tenant is alleging that DC was inside the house or trying to get into the house. Tenant acknowledged upon questioning that she considered the garage to be part of the "home". I find the Tenant's statement above, at paragraph 6 of her first written statement, to be somewhat misleading as it seems to imply that DC physically forced her way into the living area of the rental unit. I

find there is no evidence to suggest that DC was in, or close to, the entrance to the house from the garage at any time. I further find that the Tenant acknowledges DC opened the garage door with a “clicker”.

In addition, the Tenant submitted a screenshot of a text message she sent to the Landlords’ realtor, RE on April 5, 2022, which states:

Yeah, after telling [DC] and the people she had with her to leave and unless they have a court order than (sic) to leave, not to take anything. She used a garage clicker to open the garage and started taking things, I agin (sic) told her to leave, she ran further into the garage and started hitting me. I grabbed her jacket at the back of her arms so she couldn’t hit me and walked her forcefully out of the garage.

I find there is some discrepancy in the Tenant’s testimony as it is unclear whether the Tenant’s evidence is that DC “pushed me and ran past me while hitting me” or DC “ran further into the garage and started hitting me”.

I find the Tenant acknowledged she pushed DC out of the garage door at paragraph 29 of the Tenant’s first written statement. I find the Tenant acknowledged she told the Landlords that they needed a court order:

The evidence suggests that both parties called the police in the aftermath of the physical altercation. As of May 20, 2022, it does not appear that any charges have been laid on either the Tenant or DC.

The Tenant submitted a photograph of her underarm with a bruise on it. The Tenant testified the photograph was taken 6 days after the incident. The Tenant testified the bruise was caused by DC hitting her as the Tenant tried to protect her head. DC submitted a receipt dated April 4, 2022 for painkillers, but did not submit any photographs of injuries. DC testified the Tenant left scratches on her neck and back. Neither party sought treatment from a medical professional immediately following the incident.

In the absence of evidence from a medical professional, I am unable to conclude, on a balance of probabilities, that the bruise shown in the photograph was caused by DC. I find that since neither party sought medical attention in the days following the incident, any physical injuries that the Tenant or DC may have suffered were not significant in nature.

The Landlord BB testified that the incident of April 4, 2022 has had a “terrible effect” on both him and DC. He stated the Landlords have been trying to conduct themselves properly as landlords, only to be met with difficulty and persistent refusal from the Tenant. BB testified that a continued business relationship with the Tenant is “untenable”.

The Tenant submitted that “[b]ecause of my health issues I find dealing with housing stressful”. The Tenant submitted a note from her family doctor dated May 2, 2022, which states contains the following statement (portions redacted for privacy):

[The Tenant] has been my Family Practice patient for over 10-years.

She has mental health diagnoses and prior emotional trauma that result in being triggered when housing security and personal boundaries are infringed upon.

She struggles emotionally under stress. She is currently under immense stress due to her housing situation. Thus, she takes longer to process responses than a typical person. She would benefit from being given some flexibility and understanding when directly questioned during a formal hearing.

I have not know (sic) [the Tenant] to be a violent individual. [...]

The Tenant submitted that, since the April 4, 2022 incident, there has been further problems including issues with the showing of the rental unit by the Landlords’ realtor, RE.

Analysis

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. The onus to prove their case is on the person making the claim.

In this case, the Landlords bear the onus of proving that this tenancy should be ended early and an Order of Possession be granted.

Section 56 of the Act states as follows:

Application for order ending tenancy early

56(1) A landlord may make an application for dispute resolution requesting

- (a) an order 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) an order granting the landlord possession 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.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

Residential Tenancy Policy Guideline 51. Expedited Hearings provides the following guidance:

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.

[...]

The director has the discretion to decide what constitutes an extremely urgent case. In general, these are cases where there is a demonstrable immediate danger or threat. For example the director may determine a case is extremely urgent and set it down early if:

- a tenant has assaulted the landlord and there is sufficient evidence provided with the application (such as a video recording of the assault, witness statements, or a statement from a police officer)

[...]

The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord; [...]

Based on the testimony provided during the hearing, the documentary evidence submitted, and on a balance of probabilities, I find that the Tenant has significantly interfered with the Landlord DC within the meaning of section 56(2)(a)(i) of the Act.

My reasons for reaching this conclusion are explained below.

I find the Landlords have provided sufficient evidence to demonstrate that the Tenant has committed a serious breach as a result of her conduct on April 4, 2022. In considering DC and BB's testimony, the Landlords' written statements, and witness statements from BF and MH, I am satisfied that the Tenant intentionally inflicted harmful, offensive, and unlawful force on DC during the incident on April 4, 2022. I find that this force took place in the form of the Tenant grabbing and pushing DC by approximately 3 ft out of the garage. I further find that this unwanted physical contact was initiated by the Tenant, and was violent in nature as it was coupled with yelling and use of profanity. I am satisfied, on a balance of probabilities, that it was the Tenant who

initiated physical contact with DC, because: (a) the Tenant had previously initiated physical contact with DG to remove him from the rental unit on March 25, 2022, and (b) for reasons explained below, I find the Tenant's claim that DC was trying to hit her and force her way into the main area of the house from the garage to be less credible. I find that the parties relationship had significantly deteriorated following the March 25, 2022 incident, and that there was an escalation of the conflict on April 4, 2022. Furthermore, I find whether DC consequently suffered injuries to be less relevant. I find that by grabbing and pushing DC out of the garage in an aggressive manner, the Tenant violated DC's right to bodily integrity intentionally and without reasonable justification, which in my view is sufficient to constitute significant interference within the meaning of section 56(2)(a)(i) of the Act.

I am satisfied that there was no reasonable justification for the Tenant's conduct in the circumstances.

First, I find that the Tenant was served with written notice of the entry on April 4, 2022 more than 24 hours before the entry, in accordance with section 29(1)(b) of the Act. The Tenant acknowledged she received a copy of the Notice of Furnishings Removal on March 30, 2022. I find the Notice of Furnishings Removal provides the purpose for entering, which is to remove furnishings as requested by the Tenant and in accordance with the Lease Agreement. I find this purpose to be reasonable. I further find that the Notice of Furnishings Removal states the time of entry will be between 9:00 [am] and 2:00 pm on April 4, 2022. I find that if the Tenant had read the Notice of Furnishings Removal, she would be aware that the scheduled date is April 4, 2022, despite the notice being dated April 2, 2022 at the top left-hand corner. I find the Landlords made reasonable efforts to confirm this with the Tenant by sending a reminder email and follow-up written notice.

Second, I find there is insufficient evidence to suggest that the Tenant's conduct was justified by a need to protect her personal property inside the garage. During the hearing, the Tenant was unable to clearly explain what personal belongings she kept in the garage, only to say that there were "boxes" and that it is a matter to be dealt with at a "non-urgent hearing". The Tenant submits, at paragraph 33 of her first written statement, that "the Landlords and their agents were removing things without checking to see if they were mine or the Landlords". However, I do not find there to be any motive or reason for the Landlords to interfere with the Tenant's personal property, or any basis for such a belief on the part of the Tenant. I find it is clear on the evidence presented that the Landlords were at the rental property to remove their own items in accordance with paragraph 8 of the Lease Agreement and the Tenant's request in the February 28,

2022 email. Indeed, the Tenant complained at paragraph 33 of her first written statement that “the Landlords’ (sic) will not acknowledge that I have been storing their personal property, resulting in a large portion of the property that is unusable”. I find there is nothing in the Notice of Furnishings Removal to indicate the Landlords intended to remove the Tenant’s personal property from the rental unit as well.

Third, I do not find the Tenant to have reacted in self-defence. I find on a balance of probabilities that it was the Tenant who initiated physical contact with DC. I am satisfied on a balance of probabilities that DC did not try to hit the Tenant or force her way past the Tenant as alleged. I find the Tenant not only wanted to prevent the Landlords from entering the inside of the house, but also wanted to expel DC and the movers from the garage. I find the Tenant had a greater motive to initiate the physical contact in order to remove DC and the movers from the garage completely.

Finally, I note that I am not without sympathy for the Tenant in having to deal with and accommodate the Landlords and their agents’ access to the rental unit. I accept the Tenant’s evidence that because of her health issues, she finds “dealing with housing stressful”. I also accept the evidence from the Tenant’s family doctor that the Tenant “struggles emotionally under stress”. While I accept that these factors may explain why the Tenant behaved the way she did, I do not find that the Tenant’s actions on April 4, 2022, which I have determined to include yelling, swearing, as well as grabbing and pushing DC aggressively, to be excusable in the circumstances.

Accordingly, I conclude that the Tenant has significantly interfered with the Landlord DC under section 56(2)(a)(i) of the Act.

In addition, I am satisfied that the Landlords have met the requirement under section 56(2)(b). I find it would be unreasonable and unfair for the Landlords to wait for a notice to end the tenancy under section 47 to take effect for the reasons given below.

First, the Landlords made this application promptly on April 9, 2022, within days after the April 4, 2022 incident. I find this highlights the seriousness of the incident in the eyes of the Landlords.

Second, it is clear that the parties have a difficult and acrimonious relationship. Since April 2022, the Landlords have begun the process of listing and selling the rental unit. I find that these circumstances will likely result in further risks for direct conflict between the Tenant and the Landlords, the Landlords agents, or other visitors to the rental property. The fact that the Tenant has admitted some visitors to the rental property

since the April 4, 2022 incident does not, in my view, mean that the risk for future conflict is low, given the Tenant's predisposition to be stressed by her housing situation and the fact that the parties' relationship remains unrepaired. I note that since the incident of March 25, 2022, the Tenant has refused DG access into the rental unit. I also find the evidence suggests that there is active conflict between the Tenant and the Landlords' realtor, RE, regarding the manner in which showings are being conducted at the rental unit. I find it would be unreasonable and unfair for the Landlords to continue to be exposed to the risk of and potential liability for these conflicts until a notice to end the tenancy under section 47 takes effect.

Thus, having found the requirements in sections 56(2)(a)(i) and 56(2)(b) of the Act to be met in the circumstances, I conclude that this tenancy should be ended early.

Conclusion

The Landlords have met the burden of proving that the tenancy should end early.

Pursuant to section 56(2) of the Act, I order that the tenancy is ended the date of this decision, June 17, 2022.

Pursuant to section 56(2), I grant an Order of Possession to the Landlords effective two (2) days after service upon the Tenant. 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 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: June 17, 2022

Residential Tenancy Branch