



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING HOUSING
ADVISORY and [tenant name suppressed to protect privacy]

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.

The landlord was represented by two agents and the agents were affirmed. There was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of the landlord's hearing materials upon the tenant. The landlord's agents testified that they posted the hearing materials, including the Notice of Dispute Resolution Proceeding and evidence, to the tenant's door on July 25, 2022 at 1:23 p.m.

I was satisfied the tenant was duly served with notification of this proceeding in a manner that complies with the Act and Rules of Procedure and I continued to hear from the landlord's agents without the tenant present and I admitted the landlord's evidence.

The landlord's agents stated they had two witnesses to call to testify. The witnesses were excluded until they were called to testify. I affirmed the witnesses.

The landlord's name, as filed, contained an obvious typographical error and I have amended the application to correctly identify the landlord to be consistent with the name appearing in the tenancy agreement.

Issue(s) to be Decided

Has the landlord established that the tenancy should end early and be provided an Order of Possession under section 56 of the Act?

Background and Evidence

The tenancy started on August 1, 2009 and the tenant's current rent obligation, after subsidy, is \$546.00 payable on the first day of every month. The landlord is holding a security deposit of \$438.50. The landlord is a housing organization that provides subsidized rental housing to families in townhouse style units located at the subject residential property.

This landlord's application revolves around an incident that occurred at the residential property on June 20, 2022. Below, I have summarized the landlord's submissions and evidence.

Landlord's submission

The landlord became aware of an incident at the residential property on June 20, 2022 when the police contacted the landlord to request video footage of the property. The landlord did not have video surveillance at the complex and suggested the police canvas the tenants at the property who may have their own video surveillance.

The landlord also received several complaints from other tenants and neighbours concerning the incident of June 20, 2022. The landlord did receive five written statements from other occupants of the property and a neighbour. The landlord's agent stated most tenants of the property were afraid to testify for fear of retaliation; however, one tenant and one neighbour were willing to testify. The landlord anonymized the written statements to protect the identities of the complainants and submitted the written statements into evidence.

Based on the oral and written statements of the police, other tenants and neighbours of the residential property the landlord submits the following took place at the residential property on June 20, 2022.

Two teenaged boys who are residents at the residential property were assaulted by a man with a bat on the residential property. The man is a guest or occupant of the tenant or tenant's rental unit. The car being driven by the boys was also significantly damaged by the man with the bat when he smashed the windshield with the bat and hit the side mirror. The assailant was seen going into the rental unit and shortly afterward other people came out of the rental unit with him. The police were called and attended

the property; however, by the time the police arrived the assailant was no longer on the scene.

The landlord submitted that other occupants of the residential property are frightened of the occupants staying with the tenant and fear further incidents. Given the seriousness of the incident, and the landlord's belief the tenant will not comply with an Order of Possession, the landlord's agent requested an Order of Possession effective two (2) days after service.

Witness SS

Witness SS testified she lives across the street from the residential property and she knows the tenant and which unit the tenant resides. On June 20, 2022 Witness SS was working from home and heard a commotion outside at approximately 11:30 a.m. Witness SS went outside and observed a silver car in the driveway of the residential property and two boys outside of the car and a man screaming and threatening and lunging at the boys with a bat. The man smashed the windshield of their car and the side view mirror of the car. The man had dropped his bicycle and backpack on the ground and Witness SS could see money and pipes in the backpack.

Witness SS approached the man with the bat in an attempt to calm him down and stop his attempts to hit the boys. The boys were trying to get protection from the man by hiding behind the open doors of their car.

Multiple people also came to see what was happening and Witness SS saw the man with the bat go into the rental unit. Witness SS had seen the man go into the rental unit on a number of previous occasions and she believed the man lived with the tenant or was her guest. The man and other men then came out of the rental unit. Witness SS yelled that she was going to call the police. Witness SS then dialled 911 but the men scattered before the police arrived.

Witness AH

Witness AH testified that she resides in a unit at the residential property where the incident of June 20, 2022 occurred and she is familiar with the residents and occupants of different units in the complex.

Witness AH testified that on June 20, 2022 she heard yelling outside so she went outside and observed a man in a white shirt chasing the boys who live in a different unit

in the complex. The man took a bat out of his backpack and was chasing and trying to hit the boys with a bat and the boys were covering their heads with their hands. The man also tried breaking the windows on the car belonging to the boys. Witness AH asked the man with the bat why he was doing what he was doing to which he told AH to mind her own business. The man with the bat went into the rental unit and then came out with more men. Witness AH called the police and three police cars arrived. Witness AH saw the police go to the rental unit and ask the tenant where the men were but the tenant said they were not there; however, Witness AH believes they were still in the rental unit.

Witness AH stated there are several children living in the residential complex and this incident, along with other incidents involving the guests or occupants living with the tenant, make her and others living in the complex afraid for their safety.

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. A notice given under section 47 affords the tenant ten days to dispute the 1 Month Notice or at least one full move to vacate the rental unit. Section 56 also provides a mechanism for a landlord to end a tenancy for cause; however, the seriousness of the alleged offence(s) or conduct permits the landlord to have the tenancy ended without having to serve a 1 Month Notice and giving the tenant the time to vacate the rental unit that is afforded to a tenant under section 47. Accordingly, section 56 is intended to apply in the most urgent and severe circumstances and applications received under section 56 of the Act 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, I have been provided affirmed testimony of two witnesses who provided credible, consistent and unrefuted version of events that took place on June 20, 2022. The landlord also provided written witness statements of other occupants and neighbour of the residential property that is consistent with the testimony of the two witnesses. I have not been provided any evidence from the tenant to contradict the version of events put forth to me. Therefore, I accept that on June 20, 2022 a man who is either a guest of the tenant, or an occupant of the rental unit, assaulted or attempted to assault other occupants of the residential property with a bat and the man also significantly damaged personal property of another occupant of the residential property by way of violent and deliberate actions.

Given the above, I find I am satisfied the person permitted on the property by the tenant has significantly interfered with and unreasonably disturbed other occupants of the property; and, committed an illegal activity that adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property. Further, given the seriousness and risk to personal safety of other occupants of the residential property, I find it would be unreasonable to wait for a 1 Month Notice to take effect. Therefore, I find the criteria for an early end of tenancy set out in section 56 of the Act have been met and I grant the landlord's request to have the tenancy ended and obtain an Order of Possession.

I order the tenancy ended effective two (2) days after service of the Order of Possession. With this decision, the landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord is also awarded recovery of the filing fee from the tenant. The landlord is hereby authorized to deduct \$100.00 from the tenant's security deposit to recover the cost of the filing fee.

Conclusion

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

Order of Possession is served upon the tenant. With this decision, the landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord is authorized to deduct \$100.00 from the tenant's security deposit to recover the filing fee from 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: August 10, 2022

Residential Tenancy Branch