



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1044645 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an order for early end to tenancy and an Order of Possession of the rental unit pursuant to section 56; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Landlord's agent RM and the Tenant attended this hearing. They were given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

All attendees at the hearing were advised the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord submitted a signed Proof of Service form which indicates that the notice of dispute resolution proceeding package and the Landlord's USB stick for digital evidence (collectively, the "NDRP Package") were given to the Tenant by RM in person on June 23, 2022, although the Tenant refused to accept the USB stick. The Proof of Service form is signed by RM and a witness, HT. The Landlord submitted a photograph of the USB stick left at the Tenant's front door. The Landlord's evidence suggests that police were called on June 23, 2022 "to keep the peace" while RM served the Tenant with the NDRP Package. The Landlord submitted a police file number in support. Based on the Landlord's evidence, I find that the Tenant was sufficiently served with the NDRP Package on June 23, 2022 in accordance with section 71(2) of the Act, Rule 10.3 of the

Rules of Procedure, and section 1(a) of the director's standing order dated March 1, 2021.

The Tenant relied on oral testimony for this application.

Issues to be Decided

1. Is the Landlord entitled to end the tenancy early and an Order of Possession?
2. Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the 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.

The Landlord submitted a copy of the parties' tenancy agreement into evidence. The parties confirmed the particulars of the tenancy as follows:

- The tenancy commenced on September 3, 2021 and is month-to-month.
- Rent is \$750.00 per month, due on the first day of each month.
- The Landlord holds a security deposit of \$375.00 in trust for the Tenant.

RM confirmed he is a property manager for the Landlord and resides in one of the units at the rental property.

RM explained that the building has a contract with a non-profit organization to help re-integrate individuals who are homeless, have drug addictions, or have mental health issues. RM stated that the non-profit organization pays rent for the Tenant.

The Landlord's application states that when RM confronted the Tenant about having thrown a fire extinguisher down the hallway stairs, the Tenant pulled a knife out on RM and "came at" RM, which resulted in the police being involved. During the hearing, RM testified that the Tenant pulled a knife on him on June 17, 2022 in the building's common area hallway. The Landlord submitted a second police file number in respect of this incident. RM testified that after the police left, the Tenant knocked on RM's door three times. The Landlord submitted audio recordings of the exchange between RM and

the Tenant through RM's door. Towards the end of one of the recordings, the Tenant can be heard yelling at RM, swearing, and denying that he had pulled a knife on RM. The Landlord also submitted an audio recording containing a witness statement for this incident, said to be made by another tenant in the building.

In addition, the Landlord submitted a video recording dated June 23, 2022, in which the Tenant can be seen outside the building yelling, swearing, and threatening to "stab" someone off camera. RM testified the Tenant was having a fight with his girlfriend and that police had to be called. RM testified the Tenant pulled the fire alarm later that night, police were again called, and the Tenant was arrested and removed from the building. RM testified the Tenant damaged the fire alarm as well.

RM testified the Tenant was previously given verbal and written warnings for various other incidents.

The Landlord submitted a copy of a warning letter to the Tenant dated May 24, 2022. This letter states that the Tenant had guests that were "openly drinking and smoking in the common hallways", as well as "disturbing other tenants with banging, yelling, partying, and causing all types of disturbances at all hours of the night".

The Landlord submitted photographs of a damaged door with scratches, cracks, and a broken knob. RM testified the Tenant damaged this door and had also "knifed" RM's door.

The Landlord submitted photographs of the fire extinguisher with the glass enclosure smashed. The Landlord's evidence indicate that the Tenant had broken the fire extinguisher glass on June 9, 2022. RM testified the Tenant caused this damage during an altercation with a guest.

The Landlord also submitted photographs and a video recording dated June 18, 2022 showing the Tenant's window broken and smashed glass on the ground outside.

RM testified that the Tenant is extremely violent, threatening, and very unpredictable. RM stated he feels unsafe and is concerned about the safety of other tenants.

RM testified that the Tenant was high on illicit drugs when the Tenant went to the psychiatric ward. RM stated the Tenant was under the influence of drugs in June 2022.

In response, the Tenant testified he has been “harassed” by RM while RM was drunk.

The Tenant testified he suffers from a mental health disorder and that his medication wasn’t working properly. The Tenant testified he subsequently went to the psychiatric ward and received proper medication.

The Tenant denied having threatened RM with a knife. The Tenant testified he heard RM in the hallway and came out while holding a “hunting knife”.

The Tenant acknowledged he had a fight with his ex-girlfriend and was yelling at her, but denied that he had a knife drawn out.

The Tenant denied he had knifed RM’s door. The Tenant acknowledged that he damaged the fire alarm but explained he wasn’t in the “right state of mind”.

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.

1. Is the Landlord entitled to end the tenancy early and an Order of Possession?

In this case, the Landlord bears 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.

Based on RM's testimony and the evidence submitted by the Landlord, I am satisfied on a balance of probabilities that an early end to the tenancy is warranted in the circumstances. I find that the Tenant has significantly interfered with and unreasonably disturbed RM as a result of the incident on June 17, 2022. I find the Tenant came out into the common hallway towards RM holding a hunting knife. I find the Tenant engaged in aggressive behaviours including yelling and swearing at RM that day. I accept RM's testimony that he feels unsafe and is concerned about the safety of other tenants. Accordingly, I find the Landlord has met the onus of proving cause for ending the tenancy early under section 56(2)(a)(i) of the Act.

In addition, I find the Landlord has established, pursuant to section 56(2)(b) of the Act, that it would be unreasonable and unfair for the Landlord and the other occupants of the rental property to wait for a notice to end the tenancy under section 47 to take effect. I find that the evidence shows the Tenant has been violent on multiple occasions requiring the assistance of police, has disturbed other occupants in the building, and has caused damage to the rental property. I find there is insufficient evidence for me to

conclude that the risk of future violent behaviour is low. I accept RM's testimony that the Tenant was under the influence of illicit drugs. Based on the foregoing, I am satisfied that there is an ongoing risk to the health, safety, and lawful interests of other occupants in the building, while the Landlord is also exposed to potential liability and risk of further property damage. Therefore, I find it would be unreasonable and unfair for the Landlord and the other occupants to wait for a notice under section 47 to take effect.

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.

2. Is the Landlord entitled to recovery of the filing fee?

As the Landlord has been successful in this application, I grant the Landlord's claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I order that the Landlord is authorized to deduct \$100.00 from the \$375.00 security deposit held by the Landlord in full satisfaction of the amount awarded in this application.

Conclusion

The Landlord has 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, August 3, 2022.

Pursuant to section 56(2), I grant an Order of Possession to the Landlord 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.

The Landlord is authorized to deduct \$100.00 from the Tenant's security deposit on account of the filing fee awarded in this application. The balance of the Tenant's security deposit shall be dealt with in accordance with the Act, the Residential Tenancy Regulation, and the parties' tenancy agreement.

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 3, 2022

Residential Tenancy Branch