



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order of possession pursuant to s. 56 for early termination of the tenancy; and
- Return of its filing fee pursuant to s. 72.

C.J. appeared as the Landlord’s agent (the “Agent”). E.F. was called by the Landlord as a witness. T.J. appeared as the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Agent advised that the Tenant was served with the Landlord’s Notice of Dispute Resolution and initial evidence by posting it his door on July 23, 2022. The Tenant acknowledges receipt of the Landlord’s application and initial evidence. I find that the Landlord served its application and initial evidence in accordance with s. 89 of the *Act*.

The Tenant confirmed that he did not serve evidence in response to the Landlord’s application.

Preliminary Issue – Late Evidence from the Landlord

The Agent testified to posting a second evidence package to the Tenant’s door on August 5, 2022. The Tenant acknowledged receiving the second evidence package and raised no objection to the late evidence when asked.

The present application is an expedited hearing in which the general service provisions of the Rules of Procedure are altered by Rule 10. Specifically, Rule 10.3 of the Rules of Procedure requires applicants to serve the Notice of Dispute Resolution and the evidence upon which they intend to rely within 1 day of receiving the Notice of Dispute Resolution from the Residential Tenancy Branch.

Rule 10.6 of the Rules of Procedure permits the late inclusion of evidence provided it meets the criteria set out under Rule 3.17, which is to say that it is new and relevant.

The Agent testified the additional evidence relating to events that transpired after the initial evidence was served. However, the Landlord's additional evidence includes witness statements, which the Agent confirmed did not pertain to circumstances that took place after the initial evidence was served. The additional evidence also included a release order dated July 15, 2022, which the Agent says she received from the Tenant and some written submissions from the Agent.

Based on the submissions of the Agent, I find that much of the Landlord's additional evidence is not "new" within the meaning of Rule 3.17, being the written submissions and the witness statements. With respect to this evidence, I do not include it into the record.

However, the release order of July 15, 2022 was put into evidence by the Landlord after having received a copy from the Tenant. I see little prejudice in including this into evidence. Though it was served late, the Tenant clearly had it in his possession, in all likelihood before the initial was ever served.

Though the Tenant did not object to the late evidence, I find that it would be procedurally unfair to include it in the record given the Landlord's clear breach of Rule 10.3 and the limited window in which the Tenant had to review and respond. However, this does not extend to the release order of July 15, 2022, which was in the Tenant's possession before the second evidence package was served as the Landlord obtained a copy directly from the Tenant.

Issues to be Decided

- 1) Is the Landlord entitled to an order of possession without issuing a notice to end tenancy?
- 2) Is the Landlord entitled to the return of its filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on December 1, 2019.
- Rent of \$406.00 is due on the first day of each month.
- No security deposit was paid by the Tenant.

A copy of the tenancy agreement was put into evidence by the Landlord. The Agent advised that the Landlord is a not-for-profit entity and provides rental options for low-income seniors. The rental unit is part of a multi-unit residential property.

The Agent testified to an incident that occurred on April 18, 2022 in which the Tenant kicked in the door of a neighbouring rental unit. The Agent indicates that the Tenant was charged following the incident on April 18, 2022.

The occupant of the neighbouring rental unit, E.F., was called as a witness and testified to the Tenant coming to her residence on four occasions in the late afternoon and evening of April 18, 2022. E.F. testified to the Tenant writing “Bitch” on her door on the 18th. The Landlord’s evidence includes a photograph of door with “Bitch” being written in large letters across the door.

E.F. testified to the Tenant knocking down her door on the 18th, entering her rental unit, and cornering her in her bedroom. The police were called and the Tenant was arrested. E.F. testified to the Tenant telling to her “You’re dead. I’m going to kill you.”

The Tenant provided little in the way of response to the allegation and confirmed that he had kicked down the door as alleged on April 18, 2022. The Tenant emphasized that he is in counselling and has been attending alcoholics anonymous. He says that he has repaid the Landlord for the cost of repairing the door. He indicates that he is no threat to E.F. and says he goes to work and comes home. The Tenant apologized for the incident and says that he is attempting to get his life back on track.

After the April 18, 2022 incident, the Agent testified to a series of release orders being issued. I am told that the first set of conditions prohibiting the Tenant from contacting E.F.. The Agent testified that the Tenant sent text messages to E.F. between May and June 2022. The Agent advised that the text messages were not put into evidence on the advice of crown counsel. However, the Agent testified to reviewing the text messages the Tenant is said to have sent to E.F. and described them as threatening, including one that is said to have been "I'm going to fucking kill you".

E.F. testified to an incident in which the Tenant came to her residence on Mother's Day and that she asked him to leave. Another incident was described in which E.F. found on that her car had been keyed and her tire slashed. E.F. says that the Tenant was arrested once more on July 2, 2022.

The Tenant denies breaching any of the conditions in his release orders and specifically denies keying or slashing the tire to E.F.'s car.

A subsequent release order dated July 3, 2022 was issued, which was put into evidence by the Landlord. That release order restricted the Tenant from attending the residential property, though I was advised by the Agent that that restriction was lifted following a third release order issued on July 15, 2022. The release order of July 15, 2022 was put into evidence by the Landlord.

The Agent also testified that after the Notice of Dispute Resolution was served on July 23, 2022 that the Tenant continued to call and contact her afterwards, despite being asked to stop. The Agent argued that past behaviour is the best gauge for determining future conduct and emphasized that the Tenant has breached conditions of his release and refused to stop contacting her when asked to do so. She argued there is a high probability that the Tenant will threaten E.F. once more.

I enquired why the Landlord did not take steps after the incident on April 18, 2022 to either issue a One-Month Notice or seek an order of possession. The Agent testified that she had spoken with E.F. regarding the matter and it was decided that no steps would be taken as the conditions of the Tenant's release were thought to provide some protection. The Agent says that the second release order of July 3, 2022 prompted the Landlord to file the present application.

E.F. testified to being fearful of the Tenant.

Analysis

The Landlord applies for an early termination of the tenancy pursuant to s. 56 of the *Act*. A landlord may end a tenancy early under s. 56 where a tenant or a person permitted on the residential property by the tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- put the landlord's property at significant risk;
- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property, 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 has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
- caused extraordinary damage to the residential property,

These grounds, which are set out in s. 56(2)(a), mirror those found within s. 47(1)(d) to (f). The key difference between ss. 47 and 56 is that under s. 56(2)(b) a landlord is not required to issue a notice to end tenancy on the basis that it would be unreasonable or unfair to the landlord or other occupants of the residential property to wait for a one-month notice given under s. 47 to take effect.

Policy Guideline #51 sets out, at page 4, that applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. Policy Guideline 51 provides examples, including acts of assault, vandalism, production of illegal narcotics, and sexual harassment.

Under the present circumstances, I find that the Landlord has met this threshold. It is undisputed that the Tenant broke into E.F.'s rental unit on April 18, 2022. I find that this represented both the willful destruction of property and, most significantly, a significant interference and unreasonable disturbance to E.F.'s right to quiet enjoyment.

The Tenant has been criminally charged following the incident. Though the criminal allegations have yet to be proven in court, the Tenant admitted at the hearing to the conduct alleged within at least the first count of the charge. Based on the Tenant's admission, I find that incident of April 18, 2022 also constituted illegal conduct. I further find that the conduct has adversely affect E.F's right to quiet enjoyment.

E.F. alleges that she has received death threats from the Tenant. The Agent confirms seeing a text message from the Tenant, which contained a death threat. The Tenant did not specifically deny that he issued death threats to the Tenant, only emphasizing that he did not breach the conditions of his release and that he was attempting to get his life back in order. Based on the testimony of the parties, I find that the Tenant more likely than not issued death threats to E.F., including by way of text message after the April 18, 2022 incident took place.

Upon consideration of Policy Guideline #50 and the evidence presented to me, I find that forced entry into a neighbouring rental unit is sufficiently serious to warrant ending a tenancy under s. 56. I have little difficulty in finding that the nature of the Tenant's conduct is such that it would be unreasonable and unfair to the Landlord and specifically E.F. to wait for One-Month Notice to take effect. Given the circumstances of the conduct I accept that E.F. is fearful of the Tenant.

Though much of conduct took place in April 2022, the Tenant appears had been re-arrested in early July 2022, resulting in additional counts being added to his charge. New conditions were placed on his release on July 3, 2022. The Landlord acted with a degree of restraint following the April 2022 incident and took immediate action in the form of the present application after the Tenant was arrested once more after breaching conditions of his release.

I find that the Landlord is entitled to an order of possession under s. 56.

Conclusion

I grant the Landlord an order of possession under s. 56 of the *Act*. The Tenant shall provide vacant possession of the rental unit within **two (2) days** of receiving the order of possession.

The Landlord was successful in its application. I find that it is entitled to its filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's **\$100.00** filing fee.

It is the Landlord's obligation to serve the order of possession and monetary order on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenant does not comply with the order of possession, it may

be filed by the Landlord with 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: August 11, 2022

Residential Tenancy Branch