



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The Landlords seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order of possession pursuant to s. 56 for the early termination of a tenancy; and
- return of their filing fee pursuant to s. 72.

T.H. appeared as the Landlord and was joined by S.D. as his counsel. Two witnesses were put forward by the Landlord, K.W. and R.R., however the Landlord only called K.W. to provide testimony. A.F. and J.G. appeared as the Tenants.

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.

Landlords’ counsel advised that the Notice of Dispute Resolution and the Landlords’ evidence were posted to the Tenants’ door on August 25, 2022. The Tenant’s acknowledged receipt of the Landlord’s application materials. I find that the Landlords’ application materials were served in accordance with s. 89 of the *Act*.

Preliminary Issue – Tenant’s Adjournment Request

The Tenants called into the hearing approximately 9 minutes after it had began and requested that the hearing be adjourned. A.F. indicated that she had a medical appointment for screening at the hospital and could not proceed with the hearing. I was further advised that her co-tenant, J.G., could not speak on their behalf as he has a

learning disability. The Tenants provided no evidence to support their adjournment request.

Landlord's counsel disputed the adjournment request, emphasizing that the Tenants had not contacted them prior to the hearing to request the adjournment and that the circumstances were such that the hearing ought to proceed.

Rule 7.8 of the Rules of Procedure permits the adjournment of a hearing after it has commenced. Rule 7.9 of the Rules of Procedure sets out the criteria for granting the adjournment and states the following:

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

The Landlords' application is for an early termination to the tenancy, which is limited for urgent matters in which there is a threat to the physical well being of individuals or imminent threats to property. Presently, it is alleged that the Tenants assaulted another occupant of the building.

I declined to grant the Tenants' request for an adjournment. The nature of the allegations are serious and require the matter be adjudicated as soon as is practicable. The Tenants provide no documentary evidence to support why an adjournment is necessary, nor did they correspond with the Landlords or counsel about the need for an adjournment prior to the hearing. Surely the medical appointment did not appear out of thin air and some planning may have been exercised such that the Tenants would not have had the conflict in their schedules. I find that the prejudice to the Landlords and the other occupants outweighs the prejudice to the Tenants, who may have to reschedule an appointment.

Issues to be Decided

- 1) Are the Landlords entitled to an order of possession without issuing a notice to end tenancy?
- 2) Are the Landlords entitled to the return of their 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.

Landlord's counsel confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on February 1, 2022.
- Rent of \$1,200.00 is due on the first day of each month.
- The Landlords hold a security deposit of \$600.00 in trust for the Tenants.

It was confirmed that the Tenants continue to reside within the rental unit.

A copy of the tenancy agreement was provided by the Landlords. The subject rental unit is a basement suite and the upstairs is rented by other occupants.

Landlords' counsel alleges that both Tenants assaulted the upstairs occupant R.R. on May 7, 2022. I was directed to a video of the alleged assault provided by the Landlords in their evidence. Landlords' counsel described that the video shows the Tenants attacking R.R., which included the Tenants use of a log and brick in their attack of R.R..

Landlords' counsel advises that both Tenants have been charged for assault with a weapon following the May 7, 2022 incident. I was directed to court services online searches, which confirm both have been charged. The Tenants were scheduled for their first appearance on August 16, 2022, but Landlord's counsel advises that the matter had been adjourned on that date.

The Landlord called K.W., another occupant of the upstairs rental unit, as a witness. K.W. testified that she and R.R. have been tenants of the upstairs rental unit for three-and-a-half years and that they had no issues with Landlords or tenants prior to the current Tenants. K.W. says that she was within the rental unit on May 7, 2022 when she heard a commotion from the backyard. She says that she witnessed the Tenants attack

R.R.. K.W. further testified that the camera footage provided by the Landlords is from their security camera which overlooks the backyard at the residential property. K.W. further testified having small children who were woken up by the noise on May 7, 2022 and that they had night terrors following the incident. K.W. says she is fearful of being at home alone following the incident.

On cross-examination, the Tenant A.F. enquired whether K.W. had apologized to her and indicated they were seeking to drop the charges. K.W. denied this. K.W. confirmed her understanding that the May 7, 2022 incident started due to an argument they had with the Tenants regarding an allegation that the Tenants were touching their stuff.

The Tenants do not specifically deny the allegation that they attacked R.R. on May 7, 2022. It was argued that the incident was the result of R.R.'s conduct. The Tenants say that they used to be friendly with the upstairs occupants but that there was a falling out. A.F. indicates that she was concerned for the welfare of the upstairs occupants' children and had threatened to report issues to the MCFD. At the conclusion of the hearing, A.F. indicates that she would be reporting the Tenants to the MCFD.

The Tenants further denied they had been charged with any crime, though conversely argued that the upstairs occupants did not want to drop charges as they were fearful the Landlords would evict them if they did so. A.F. testified that she did not have an opportunity to review the video as she does not have a computer. However, she testified that she would deny her conduct if she had seen it. A.F. further testified that she has rage issues and may have attacked R.R. but that she could not remember the incident as she blackouts.

Landlord's counsel further advised that the water for the upstairs rental unit was shut off on July 24, 2022 for two days. It was argued that the Tenants were responsible for shutting off the water as the water shut off for the upstairs rental unit is located within the basement rental unit. The Tenants deny shutting off the water for the upstairs rental unit and that the Landlords had shut off the water as there was a water leak from the upstairs rental unit.

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, as 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.

With respect to the video, I have considered what prejudice may exist to the Tenants as A.F. testified that she did not have a computer to access the digital evidence. It does not, in my view, matter that the Tenants do not have a computer. The Tenants were properly served within the proscribed time limits and could have made use of a public computer, such as at a library or the courthouse. The Tenants have an obligation to review the evidence that has been served on them and whatever prejudice that may exist is self-imposed by the Tenants failure to adequately prepare for the hearing.

I have reviewed the video provided by the Landlords with respect to the incident on May 7, 2022. It shows an individual, who was identified as R.R., arguing with the Tenants. Both parties are yelling at each other. The two other individuals, identified as the Tenants, can be seen within the video. J.G. is then seen running toward R.R., grabbing him, and the two shuffling for a moment before A.F. joins and begins pushing at R.R.. A.F. is then seen grabbing what appears to be a log from the ground and throws it at R.R.. J.G. is later seen grabbing a brick and moving toward R.R. with the brick over his head as if to throw it at R.R.. J.G. did not throw the brick. The confrontation ends with R.R. walking away and appears to tell the Tenants "You are both fucking dead".

The video shows conduct from R.R. which I do not condone, particularly the threat directed toward the Tenants at the end of the confrontation. The argument, which the video appears to indicate was with respect to R.R.'s allegation that the Tenants touched his extension cord, is entirely petty. However, the Tenants are responsible for their own actions. The Tenants escalated the argument by physically confronting R.R.. A.F. can be seen throwing the log toward R.R.. J.G. clearly lunges toward R.R. and menaces him with a brick. Throughout all of this, R.R. is not seen attacking the Tenants such that there is no argument that the Tenants were acting in self-defence.

At the hearing, A.F. testified that she has rage issues, that she blackouts in those instances, and that she would not deny the alleged conduct in the video had she been able to access it prior to the hearing. A.F.'s admissions demonstrate a troubling lack of self-control.

I find that the Landlords have established that the Tenants have engaged in illegal activity, namely assault, that has adversely affected R.R.'s safety and physical well-being. Given the nature of the conduct, I further find that it would be unreasonable for the Landlords and the other occupants to wait for a One-Month Notice to take effect. I find that the Landlords are entitled to an order of possession.

Conclusion

The Landlords have established they are entitled to an order of possession pursuant to s. 56 of the *Act*. The Tenants shall provide vacant possession of the rental unit to the Landlords within **two (2) days** of receiving the order of possession.

The Landlords were successful in their application. I find they are entitled to the return of their filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenants pay the Landlords' \$100.00 filing fee. Pursuant to s. 72(2) of the *Act*, I direct that the Landlords retain \$100.00 from the security deposit in full satisfaction of their filing fee.

It is the Landlords' obligation to serve the Tenants with the order of possession. If the Tenants do not comply with the order of possession, it may be filed by the Landlords 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: September 07, 2022

Residential Tenancy Branch