



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call, having been adjourned twice at the request of the tenant.

The landlord has applied for an Order of Possession ending the tenancy early because it would be unreasonable, or unfair to the landlord or other occupants to wait for a Notice to End Tenancy for Cause to take effect; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord and the tenant attended the hearing on each scheduled date, and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

During the course of the hearing, I allowed the tenant to provide video evidence and adjourned the hearing to ensure the video could be viewed by the landlord's agent. The tenant provided numerous other items, contrary to what I had allowed, however the landlord's agent has received all of the items and is not opposed to the evidence being considered. Therefore, all evidence of the tenant has been reviewed and all of the evidence I find relevant to the landlord's application is considered in this Decision.

The tenant advised that no evidence has been provided to the tenant. The landlord's agent testified that the evidence was served by registered mail on September 1, 2022, and has provided proof of that. The *Act* specifies that documents served in that manner are delivered 5 days later. However, some of the landlord's evidence was provided to the Residential Tenancy Branch system later than required by the Rules of Procedure, and I decline to consider that evidence. All other evidence of the landlord that I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the tenancy should end earlier than a notice to end the tenancy would take effect?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on April 1, 2014 and reverted to a month-to-month tenancy after March 31, 2015, and the tenant still resides in the rental unit. Rent in the amount of \$1,325.00 is currently payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$575.00 as well as a pet damage deposit in the amount of \$575.00 in October, 2021 when the tenant obtained a pet. Both deposits are still held in trust by the landlord. The rental unit is an apartment in a building containing 66 units and 3 stories.

The landlord's agent further testified that on August 11, 2022 the tenant slapped the maintenance manager, or tried to slap him. The maintenance manager backed away and his head swung and his hat was knocked off. The landlord's agent witnessed it and testified that it was really scary. The tenant was aggressive and rude to the both the landlord's agent and the maintenance manager, who were trying to calm the tenant down.

The 2 employees of the landlord had overheard a person saying, "don't touch me," and saw the tenant holding another occupant. The other occupant said she didn't need help but followed the 2 employees of the landlord. The tenant also followed and kept asking who the maintenance person was, and the landlord's agent responded. The tenant tried to slap him, and he had to back away. Police were called, and now the maintenance person cannot come onto the property due to safety reasons.

The landlord's agent is not feeling safe to work at the rental building and tries to avoid the tenant, communicating only by email. The company would like to end the tenancy. The tenant has been a resident of the building for over 10 years and his behaviour has changed; he has become more aggressive.

The landlord has also provided a video taken by a neighbour, who does not reside on the rental property as evidence of the tenant's behaviour.

The landlord had served the tenant with a One Month Notice to End Tenancy for Cause for another reason, prior to this incident. The tenant disputed it and the hearing is scheduled for January, 2023.

The tenant testified that the landlord has a motive to remove the tenant because the tenant has a dog, and was granted permission.

The tenant walks with a cane and is brain injured, and no one is scared of the tenant. The tenant has always been kind and respectful, including the week of this hearing, and communications by email are polite.

The tenant has never seen the maintenance person who works for the landlord, but only knew another employee of the landlord, and they text happily. The person with the landlord's agent that day was pretending to look at an emergency exit sign which had been broken for a year. He then recorded the tenant's front door and the tenant asked what he was doing, but he wouldn't answer. The tenant asked the landlord's agent who he was, then the tenant tipped the man's hat and his head did not go sideways. The tenant only used the tip of his finger, but the man wouldn't answer and slapped the tenant twice, hard. The tenant is the one afraid and still doesn't know who the man is.

The landlord's agent has thanked the tenant for taking care of things for all neighbours and maintenance on the property. To suggest she is afraid is a lie. Since the incident, the tenant has still been kind and respectful, not intimidating.

Analysis

The *Residential Tenancy Act* permits a landlord to apply for an Order of Possession ending the tenancy earlier than a One Month Notice to End Tenancy for Cause would take effect because it would be unreasonable, or unfair to the landlord or other occupants to wait for the Notice to take effect. In this case, the landlord's agent testified that such a Notice has been issued to the tenant, for an incident unrelated to the facts before me in this case. The tenant has disputed that Notice and a hearing is scheduled for sometime in January, 2023.

I have reviewed all of the evidentiary material provided by the parties. The landlord's agent testified that the video provided by the landlord illustrates the aggressive behaviour of the tenant. I find to the contrary, the neighbour in the video obviously does not fear the tenant. The video depicts 2 obnoxious men hurling profanities, insults and allegations at each other. Perhaps the neighbour provided the landlord with the video

because he would be happy if the tenant were evicted, however his provocative behaviour does not indicate any fear.

The landlord's agent also testified that she fears the tenant having observed an incident with the maintenance manager, wherein the tenant tried to slap the maintenance manager. The parties agree that the tenant's hand went up to the person's face, but did not connect with anything other than the person's hat. There is no other evidence of incidents. I do not find the incident to be so serious, and I am not satisfied that the landlord has established that the tenancy should end earlier than the Notice to End Tenancy for Cause to take effect. I dismiss the landlord's application.

Since the landlord has not been successful with the application, the landlord is not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply.

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: October 13, 2022

Residential Tenancy Branch