



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") for an order to end the tenancy early for health or safety reasons, receive an order of possession, and to recover the cost of the filing fee.

Landlord DW ("landlord") attended the teleconference hearing and gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. The hearing process was explained and an opportunity to ask questions was provided to the landlord. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing dated September 16, 2022 ("Notice of Hearing"), the application and documentary evidence ("Package") were considered. The landlord provided affirmed testimony that the Package was served by posting to the door of the tenant on September 16, 2022 at 6:05 p.m., which was witnessed by their brother. I accept the undisputed testimony before me that the service was completed on September 16, 2022. Section 90 indicates that documents posted to the door are deemed served 3 days after they are posted. I find the tenant was deemed served as of September 19, 2022. As the tenant did not call into the hearing on this date, October 6, 2022 at 9:30 a.m., I consider this matter to be undisputed by the tenant. Given the above, the hearing continued without the tenant present in accordance with Rule 7.1 and Rule 7.3 of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"), which address consequences for not attending a dispute resolution hearing.

Preliminary and Procedural Matters

The landlord confirmed their email address and the tenant's email address at the outset of the hearing and stated that they understood that the Decision and any applicable orders would be emailed to the landlord and that the Decision only will be emailed to the tenant.

The landlord testified that on September 19, 2022 the tenant moved some of their personal items out of the rental unit and then returned again on September 20, 2022 at 9:55 p.m. and was slamming doors. The landlord stated that after September 20, 2022 the tenant has not been seen at the rental unit and the rental unit keys were not returned. Given the above, the landlord continues to seek an order of possession should the tenant return to the rental unit as the tenant continues to hold the rental unit keys.

The landlord testified that the video evidence was served on the tenant via CD and by posting it as part of the Package on September 16, 2022. The landlord stated that they could not confirm if the tenant opened the CD due to the police advising the landlord to avoid the tenant due to safety concerns. Given the above, I consider the video evidence sufficiently served pursuant to sections 62(2) of the Act.

Issues to be Decided

- Are the landlords entitled to end the tenancy early and obtain an order of possession for health or safety reasons under section 56 of the Act?
- If yes, are the landlords entitled to the recovery of the cost of the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The landlord testified that the tenancy began on December 11, 2021. Monthly rent is \$1,700 per month and due on the first day of each month. The tenant paid a security deposit of \$850 at the start of the tenancy, which the landlord continues to hold.

The landlord testified that the tenant assaulted them on August 29, 2022, which was supported by the video evidence before me. The video shows the tenant hit the landlord first and then the landlord defended themselves, only to be thrown to the ground where the tenant continued to assault the landlord.

The second video reviewed shows the tenant screaming harsh obscenities at a close distance to the face of the landlord. During this 2-minute period of time, the young son of the landlord (identified by the landlord as approximately age 10, whose name is GL) is loudly crying and sobbing and constantly pulling his mother (aka: tenant) away from the landlord. The son is heard saying "Mommy, mommy stop...I don't want you to go to jail". The son also says "Mommy, mommy please stop" to his mother many times in the video and the tenant pushes her son away from her and continues to berate the landlord while moving closer and closer to the landlord.

The landlord eventually leaves the situation but not before the tenant threatens the landlord's property by yelling into the face of the landlord, "you will see what happens to your property!" and "you will fuckin' see what happens!". The tenant's response to her inconsolable son is "just relax". In addition, a neighbour off camera can be heard saying something to the tenant and the tenant says, "go inside your house if you feel so fuckin' threatened!" The tenant then screams at the landlord, "go inside if you are so fucking scared and call the police!"

Analysis

Based on the undisputed testimony provided during the hearing and the video evidence and on a balance of probabilities, I find and I am satisfied that the tenant has significantly interfered with or unreasonably disturbed the landlord and that the tenant has committed an illegal act, Assault and Uttering Threats, which 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, being the landlord occupying in the upper floor of the home which contains the rental unit on the lower floor.

Section 56 of the Act applies and states:

Application for order ending tenancy early

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.**

(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.

[emphasis added]

I am also satisfied that it would be unreasonable and unfair to the landlord to wait for a notice to end tenancy under section 47 of the Act. I find the actions of the tenant and the video evidence before me to support that the tenant assaulted the landlord and threatened the property of the landlord. I find that assault by a tenant against a landlord or threats to the property in a tenancy is unreasonable. Therefore, pursuant to section 56 of the Act, I grant the landlord an **immediate** order of possession. I find the tenancy ended the date of this hearing, October 6, 2022, pursuant to section 62(3) of the Act.

As the landlord's application was fully successful, I grant the landlord the recovery of their **\$100** filing fee pursuant to section 72 of the Act. I authorize the landlord to deduct \$100 from the tenant's security deposit of \$850 in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 38, 67 and 72 of the Act. Pursuant to sections 38 and 62(3) of the Act, I find that the tenant's security deposit balance is \$750 effective immediately.

Conclusion

The landlords' application is successful.

The tenancy ended this date, October 6, 2022.

The landlords are granted an order of possession effective immediately, which must be served on the tenant with police presence highly recommended or be posted to the rental unit door.

This Decision will be emailed to both parties. The order of possession will be emailed to the landlords for service on the tenant. This order may be enforced through the Supreme Court of British Columbia, if necessary.

The landlords have been authorized to retain \$100 from the tenant's security deposit. The tenant's security deposit balance is now \$750, effective immediately.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: October 6, 2022

Residential Tenancy Branch