



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an early termination of the tenancy and an order of possession – as the Landlord claims that the Tenant poses an immediate and severe risk to people and/or property.

The Tenant, his advocate, C.S. ("Advocate") and an agent for the Landlord, G.G. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenant said he had received the Application and the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenant confirmed that he had not submitted any documentary evidence to the RTB or to the Landlord.

Preliminary and Procedural Matters

The Agent provided his email address in the Application and confirmed it in the hearing. The Advocate provided his email address for the Tenant in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the tenancy be ended early with an order of possession for the Landlord?

Background and Evidence

The Parties agreed that the periodic tenancy began on June 1, 2021, with a monthly rent of \$1,000.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$300.00, and no pet damage deposit.

In the Application, the Agent outlined two issues he wanted to bring forward in the hearing. First, he said that on November 3, 2022, the Tenant threatened him and his father with a gun and a machete, after the Agent and his father attended the rental unit about a leak. The other issue the Agent raised was that the Tenant had texted the Agent's mother, the Landlord, about how her 10-year-old daughter was "hot".

#1 THREATS TO THE LANDLORD'S REPRESENTATIVES

In the Application, the Agent said the following about the first issue:

November 3rd, at 6pm Me [(G.G.)] and my father [(V.G.)] enter [the Tenant's] Basement. Our basement tenant, upon inspection, we identify the water leak that the plumber had already checked out that day. In the mists of it all, [the Tenant] starts to get angry and have a verbal back and forth with my father. I then calmed the situation down, very respectfully told [the Tenant], we would fix the water situation and sort everything out. Shortly after is when [the Tenant] started to shout the threats, which it seemed like he almost wanted us to hear. Shortly after listening and honestly shook by what I heard, I decided to record what I could even if it may not help me, and decided its best for my safety and my family's if I call the police and address the situation at hand. Multiple threats of " Guns and Machetes " that would be used to harm us if we approached the basement door again.

I listened to the audio recording the Agent said he made after exiting the rental unit. It was difficult to hear what was being said, but I did hear reference to a gun and a

machete, but without context. However, the Tenant did not deny that this was a recording of him speaking, after the Parties' interaction that day. In fact, as noted below, he accused the Agent of illegally recording his voice.

In the hearing, the Advocate responded to the Agent's assertions, as follows:

[The Agent] spoke about his experience and used a lot of terms [the Tenant] finds offensive. He's 50 years old man, a citizen with no criminal record. He has a speech impediment, and he finds it difficult expressing himself.

Is he a "nice guy" or a "gangster"? [The Tenant] is a tenant and has rights. He has been asked repeatedly to move out, because the Landlords would like to raise the rent. The police weren't called, but they investigated the incident, and no charges were laid....

The Tenant wanted to read a passage in the hearing, the essence of which is as follows:

My name is [A.K.]. I've lived at this address since June 2021, for the last 2 years. Since I lived at this residence, I have not had a proper tenancy agreement; I have asked the Landlord for an agreement, but he keeps saying 'don't worry'. I pay \$500.00 every two weeks, and a security deposit of \$300.00. They have in the past six months - have asked me to leave to raise the rent – I said I'm a good tenant, I pay all my rent and want to remain living there.

The current allegations – I deny. The RCMP did talk to me and on November 3rd they called the police. Those were false allegations, and illegally recording my voice - those are all slander and liable against me. They want to evict me by any means possible. The leak that the Landlord has refused to fix. The mould is growing. I am here to dismiss this claim and get the water damage fixed.

The Agent said:

Both keep mentioning that charges were not laid. Do charges have to be laid? That's the only reason for the eviction. It is very wrong and very true; it's not what he's making it out to be. I have suspicions that he's claiming mould – there's no mould. Why have we been talking to you about kicking you out? . . . This isn't a game. My sister is not a joke. You can't be doing that and expect to live here.

#2 COMMENTS ABOUT THE LANDLORD'S 10-YEAR-OLD DAUGHTER

The other issue the Agent raised was that the Tenant had texted the Agent's mother, the Landlord, about how her 10-year-old daughter was "hot". The Agent said the following about this in his written submissions:

On top of all this, texts messages were sent where he expressed calling my 10 year old sister hot. I will add the screenshots below, his number and even him sending pictures of himself and his son & family just minutes after those absurd texts. 10 years old is a baby and to have the this guy in our basement that my sister walks by, or even any of us, and to think he's texting the owner/landlord of the house saying that, thinking its normal? Imagine if it was one of your innocent children, that in my opinion even worse than the threats made to us and very unbearable from a parental/guardian stand point. He admitted it was him after saying no so many times I showed him the pictures he sent of himself and he had nothing to say then but whoever does that is a sick person, yet he's doing it

I'm very upset and afraid for my safety, my sisters, and the rest of the family. Please don't take this lightly, we fully understand tenants rights, and we've only been nice and helpful towards this human. But enough is enough and we need to stand up for ourselves and our kids.

In the hearing, the Advocate responded to the Agent's assertions, as follows:

The allegations about [the Tenant] finding his sister hot, he finds that extremely offensive. These allegations are completely false. [The Tenant] is an excellent tenant and treats them like family. The dispute is purely to get him out of the residence to raise the rent. He has been there for nearly two and a half years. Rent is paid up to date. There have been no problems until recently with the water damage. [The Tenant] is always respectful with his conversations. There are never any threats - no guns, no machetes. [The Tenant] goes to work, comes home and it's quiet. There are no police files on him.

The Agent responded:

I'm in awe; it's kind of jaw-dropping. It's a good job they're representing him, but at the start of the phone call, you asked us to say the truth. I know that he's lying. What happened is, my little sister is 10-years-old - just turned 11. [The Tenant] was texting my mother 2 to 3 months ago. I didn't say anything to him, because people say things . . .

He compared my little sister to the other girls living in the property. My sister – he called her “hotter” than those other little girls. How are we supposed to feel? I have text messages, and then pictures of himself - he brought it up by himself.

I asked the Agent why he did not submit copies of the texts the Tenant sent to the Landlord. He said:

No, but I can retrieve them. Not just texts; this shocked me. That day when we were there, we were talking about the plumbing; I thought - I’m going to bring this up now and ask him why he messaged about my sister – and when I brought this up, his face changed, and he said ‘that’s not me’. I had his number on the call. Right after that I scrolled to that. He sent 10 pictures of him and his son - I showed him that. You sent this, and he said: ‘I’m sorry, I didn’t know what I was doing’. That’s crazy that he is denying it now.

I again asked the Agent why he did not submit copies of these texts, and he said:

I don’t know – honestly you guys are lying we can go to the phone company to see you sent those message and pictures to my Mom right after you called my sister hot and threatening us. We haven’t asked him to increase the rent. We never asked to change it. We were happy how it is. My sister doesn’t feel safe. What am I supposed to say to her?

The Advocate responded:

I can feel the emotion, [the Agent] is emotional. [The Tenant] has emotions, too, but he has kept it in check. [The Agent] has been very contradictory - first the threat of violence, and now he has moved on – it was investigated by the police. He is not a pedophile; he is a Tenant who just wants to live in his unit. If [the Agent] was so threatened, why wasn’t he charged? There is no way [the Tenant] poses a threat.

The Agent replied:

Yes, I did tell the police. He’s just tippy toeing around. We’re not kicking him out for money. I feel for him that it’s not easy to . . . But you can keep yourself in check. I showed the police the pictures and the text he sent. They said that’s crazy wrong and he shouldn’t be there, but [they said], “We can’t arrest him, because he thinks the Landlord’s daughter’s hot.”

You're lying here. Now's the time to say our emotions. My emotions are real - you guys want to tippy toe around these things.

The Advocate said:

[The Agent] is once again quite contradictory, and using inflammatory language. I understand his emotions; [the Tenant] has his emotions, and he has kept it in check.

If something is so serious worried about your daughter. [The Tenant] is not a predator. Of course he has talked. They exchanged pictures when he first moved in. If anything was sexual or of there was nudity, the police can proceed with that. This was the first time the police were called in [two and a half] years. [The Tenant] is not a threat. You've acknowledged that. You've been going back and forth, so once again, he denies these allegations. The issue at hand is that [the Tenant] would like to continue living there, and hopefully you can fix the water damage.

The Agent said:

It just hit me: just because it's not fully wrong, doesn't mean it's not fully wrong. He didn't get sexually charged, or charged with assault, but just because it's not wrong on a legal level, I'm telling you he did it, it's wrong and true.

The Advocate said: "Once again, he's contradictory in his statements all over the place. We want you to follow the [*Residential*] *Tenancy Act*, and [the Tenant] vehemently denies all these allegations."

When I asked the Tenant if he had sent pictures of himself to the Landlord, he said: "Yes, at the beginning – we sent pictures of our children to each other."

Analysis

In order to establish grounds to end the tenancy early under section 56 of the Act, the landlord must not only establish that he has cause to end the tenancy, but that it would be unreasonable or unfair to require the Landlord to wait for a notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the testimony of the Landlord, I find that they have met that burden.

I accept the Agent's evidence that it would be unreasonable or unfair to the Landlord to wait for a One Month Notice to End Tenancy for Cause to take effect, because I find it is more likely than not that the Agent is telling the truth. While the Agent failed to submit copies of the texts and photographs that he said the Tenant sent to his mother, I did listen to the Agent's audio recording of the Tenant, in which the Tenant referred to a gun and a machete.

I found the Agent's intensity during the hearing to be consistent with the accusations he was making. It does not ring true that these Landlords are trying to evict the Tenant to raise the rent, as the Tenant suggested. The Landlord did not even request recovery of the \$100.00 Application filing fee from the Tenant, which she could have done.

I find that is more likely than not that the Tenant did send a text to Landlord saying that her [10-year-old] daughter is hotter than the other girls. I find that this, the recording, along with police having to be called to the residential property would cause the Landlord and another occupant – the Landlord's daughter - to be unreasonably disturbed.

Due to these conclusions, I therefore find that the Landlord has proven on a balance of probabilities that the Tenant has unreasonably disturbed the Landlord. I am also satisfied that it would be unreasonable and unfair to the Landlord to wait for a One Month Notice to End Tenancy to take effect, as I find without it, they and their 10-year old daughter/sister are at risk.

I therefore grant the Landlord's Application to end this tenancy early, and pursuant to section 56 of the Act, I grant the Landlord an **Order of Possession, effective two days after service is effected** on the Tenant.

Conclusion

The Landlord's Application is successful, as they provided sufficient evidence and testimony to meet their burden of proof on a balance of probabilities.

Pursuant to section 56 of the Act, the Landlord is granted an **Order of Possession** effective two days after service on the Tenant. This Order must be served on the Tenant by the Landlord and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the

Act, and 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: November 22, 2022

Residential Tenancy Branch