



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET FFL**

Introduction

This hearing was convened as a result of the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- an early termination of the tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover the filing fee for the Application from the Tenant pursuant to section 72.

The Tenant did not attend this hearing scheduled for 9:30 am. I left the teleconference hearing connection open for the entire hearing, which ended at 10:40 am, in order to enable the Tenant to call into this teleconference hearing. The Landlord attended the participatory hearing. The Landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference. A witness ("PS") was called during the hearing to provide testimony on behalf of the Landlord.

The Landlord stated the NDRP and his evidence (collectively the "NDRP Package") was served by posting it on the Tenant's door on November 19, 2022. The Landlord submitted a signed and witnessed Proof of Service on Form RTB-9 certifying the NDRP Package was served on the Tenant to corroborate his testimony. I find the NDRP Package was served on the Tenant in accordance with sections 88 and 89 of the Act. Pursuant to section 90 of the Act, I find the Tenant was deemed to have received the NDRP Package on November 22, 2022, being three days after posting on the Tenant's door.

The Landlord stated the Tenant did not serve any evidence on the Landlord for this proceeding.

Issues to be Decided

Is the Landlord entitled to:

- an early termination of tenancy and Order of Possession?
- recover the filing fee for the Application from the Tenant?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Landlord stated the tenancy commenced on January 1, 2022 on a month-to-month basis with rent of \$1,950.00 payable on the 1st day of each month. The Landlord stated that when a former tenant vacated the adjoining rental unit, the Tenant rented that unit as well as the rental unit for total rent of \$2,650.00 per month. The Landlord stated the Tenant paid a security deposit of \$950.00 that he was holding in trust for the Tenant.

The Landlord stated he served the Tenant with a written notice to access the rental unit about two months' ago. The Landlord stated he and PS went to do the inspection of the rental unit and to collect the rent from the Tenant. The Landlord stated he knocked on the Tenant's door and, when he asked to enter the rental unit, the Tenant took a knife and chased them off the residential property. The Landlord stated he did not contact the police regarding the incident. The Landlord submitted into evidence a video was taken while he and PS were running away from the residential property but it did not show the Tenant.

PS, the son of the Landlord who is 24 years old, was called as a witness. PS stated he went with the Landlord to collect the rent and to perform an inspection of the rental unit. PS stated that, when the Landlord asked the Tenant for access to the rental unit to perform the inspection the Tenant produced a knife. PS stated that, when he spotted the knife in the Tenant's hand, he told the Landlord to run and the Tenant chased them from the entrance door and off the residential property. PS stated the incident lasted one or two minutes. PS stated the Tenant told them she was not going to pay the rent

and to never come back onto the residential property. PS stated he and the Landlord were very upset over the incident. PS stated that, when he went alone to collect the rent for January or February 2022, the Tenant was very aggressive and displayed hostile movements toward him .

When I asked why the Landlord did not make an application for dispute resolution on an earlier date, the Landlord stated he did make an application for dispute resolution to seek an early end to the tenancy at the beginning of August 2022. The Landlord stated the Residential Tenancy Branch ("RTB") made a request that he provide further information before that application could be processed. The Landlord stated that before he could respond to the RTB's request, his mother passed away and his attention was diverted to other matters he had to attend to. The Landlord stated that, by the time he did respond, the RTB had withdrawn his application for dispute resolution. The Landlord stated that he then made the Application.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the onus is the Landlord to establish on a balance of probabilities that it is entitled to an order for an early end of the tenancy.

The conditions that must be met for a tenancy to be ended early are set out in sections 56(2) and (3) as follows:

Application for order ending tenancy early

- 56(2) The director may make an order specifying the date on which the tenancy ends and the effective date of the order of possession only if satisfied that
- (a) the tenant or a person permitted in the manufactured home park 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.

Residential Tenancy Branch Policy Guideline ("RTBPG") Number 51

[Expedited Hearings] provides guidance on a landlord's application for dispute resolution to seek for an early end of tenancy pursuant to section 49 of the Act. The following excerpts of that Policy are relevant to the Landlord's application:

The expedited hearing process is for emergency matters, where urgency and fairness necessitate shorter service and response time limits.

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker. The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

I found the testimony of the Landlord and PS to be credible and forthcoming. Both the Landlord and PS expressed a sincere fear of bodily harm when the Landlord chased them off the residential property with a knife in hand. Both the Landlord and PS stated they feared the Tenant's hostile behavior and threat of bodily harm made them fearful of returning to the residential property. A landlord has the right to give a tenant written notice to access a rental unit to perform an inspection in accordance with the provisions of section 29 of the Act. In this case, the Tenant's threats to cause bodily harm to the Landlord and PS interfered with the Landlord's right and interest to inspect the rental unit and to collect the rent. As such, based on the undisputed testimony of the Landlord and PS, I find the Tenant has breached subsection 56(2)(a)(ii) of the Act by seriously jeopardizing the health or safety or lawful right or interest of the Landlord and other occupants of the residential property.

In addition to the incident in which the Tenant chased the Landlord and PS off the residential property with a knife, PS stated the Tenant has demonstrated aggressive behavior towards him previously. Based on the undisputed testimony of the Landlord and PS, I find it reasonable to conclude that the Tenant poses a serious threat to the safety of both the Landlord and PS, or either of them alone, should return to the residential property to collect the monthly rent or to perform an inspection of the rental unit after the Tenant has been served with a written notice in compliance with section 29 of the Act. Based on the undisputed testimony of the Landlord and PS, I find, pursuant to section 56(3) of the Act, that 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 of the Act to take effect. As such, I find the Landlord has proven cause to end the tenancy pursuant to section 56 of the Act. Based on foregoing, I grant the Landlord an Order of Possession effective two days after the Landlord serves this decision and attached Order on the Tenant.

As the Landlord has been successful in his application, I order the Tenant pay the Landlord \$100.00 for the filing fee of the Application. Pursuant to section 72(2)(b), the Landlord may deduct the \$100.00 from the Tenant's security deposit of \$975.00. The Landlord must handle the remaining \$875.00 of the Tenant's deposit in accordance with the requirements of the Act.

Conclusion

I grant an Order of Possession to the Landlord effective two days after service of this Order on the Tenant. Should the Tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord is authorized to deduct \$100.00 from the Tenant's security deposit to cover the filing fee of the Application.

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: December 16, 2022

Residential Tenancy Branch