



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CONNECTIVE SUPPORT SOCIETY
KAMLOOPS and [tenant name suppressed to protect privacy]

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* ("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; and to recover their \$100.00 Application filing fee.

An agent for the Landlord, R.D. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended for the Tenant. The teleconference phone line remained open for 30 minutes and was monitored throughout this time. The only person to call into the hearing besides me was the Landlord's Agent, who indicated that she was ready to proceed. I have also confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

The Agent said in the hearing that the Tenant was served with the Application, Notice of Hearing, and documentary evidence by posting them on the rental unit door on November 4, 2022. The Landlord submitted a proof of service by signed by someone who witnessed this service. As a result of this evidence and pursuant to section 90 of the Act, I find that the Tenant was deemed served with the Notice of Hearing and documentary evidence on November 7, 2022, three days after it was posted to his door.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about the hearing process. During the hearing, the Agent was given the opportunity to provide her evidence orally and respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

The Agent provided the Landlord's email address in the Application, and she confirmed it in the hearing. The Agent advised me of an RTB application that the Tenant initiated disputing a One Month Notice (although, for which the Tenant has not served the Landlord with a Notice of Hearing).

As the Tenant submitted his email address in this application, I advised the Agent that I would be using this email address to send the Decision to the Tenant. The Agent confirmed her understanding that the Decision would be emailed to both Parties, with any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession based on the early termination of the tenancy in accordance with section 56 of the Act?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Landlord submitted a tenancy agreement signed by the Parties. The Agent confirmed the following details of the tenancy in the hearing. The periodic tenancy began on August 15, 2022, with a monthly rent of \$975.00, due on the first day of each month. The Agent confirmed that the Tenant paid the Landlord a security deposit of \$487.50, and no pet damage deposit. She also confirmed that the Landlord still holds the security deposit in full.

The Agent advised me that the Landlord served the Tenant with a One Month Notice to End the Tenancy for Cause dated September 26, 2022, because of the Tenant's behaviour prior to this. The One Month Notice was signed and dated September 26, 2022, it has the rental unit address, it was served by posting it on the rental unit door on September 26, 2022, with an effective vacancy date of October 31, 2022, and it was served on the grounds that the Tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the Application, the Agent wrote the reason for this request:

We had served a one [month] notice to end tenancy for October 31st and it is going to arbitration but there have been more incidents of violence and

disturbance with RCMP involvement. In addition, the tenant is allowing street persons in the building to sleep. Our maintenance staff is having to clean up used needles, feces, and urine from the street persons sleeping in the stairwells.

In the hearing, the Agent said that the reason she seeks an early termination of the tenancy and an order of possession is because the Tenant has assaulted and threatened people in the residential property. The Agent said:

We've had multiple police attendance on cameras, and have had to ask the RCMP to attend. He beat a young woman in the hallway quite severely. He assaulted her on September 5th; I believe there are charges going to the Crown.

The Agent submitted photographs of an incident recorded by a camera in the hallway. These photographs are identified as having been taken on September 5, 2022, and the Agent said that they are of the Tenant and a young woman. The photographs show a physical interaction between these people, with the woman being pulled in and forced out of the rental unit, and landing on the floor in the hallway.

The Agent continued: "On September 21, there was another upsetting incident. The photos are dark – he threw a young woman off the balcony. The RCMP came."

I note the Agent also submitted a text message dated September 21st from the Tenant's upstairs neighbour, saying:

So uhm. The guy downstairs kicked his gf out in the worst way. He from what it sounds like literally threw her off the balcony. She's hurt and bleeding there's tons of people outside who saw it passing by. Should I call cops? Cops are outside and on scene.

The Agent also said:

We are having problems with street people coming into the building, which is entered by fob access. When I asked them how they got in, they said '[Tenant's unit] is letting me stay here'. They have been quite destructive. He has given them a fob, and I can't shut it down until after this hearing.

He moved a young woman and her dog into the unit – pets aren't allowed. There have been several other RCMP incidents before he disappeared last week. I

can't confirm if he's moved out. Someone is still going in and out of the unit. I will have to change the locks.

The Agent submitted a warning letter the Landlord issued to the Tenant dated September 16, 2022 ("Warning Letter"). In this letter, which was sent by registered mail, the Landlord quotes clause 6 of the tenancy agreement, which addresses tenants' conduct in the residential property. This clause reads:

6.

CONDUCT: *In order to promote the safety, welfare, enjoyment, comfort, of other occupants and tenants of the residential property, the tenant and guest shall not disturb, harass, or annoy other occupants of the residential property or neighbours. In addition, noise of any kind, which in the reasonable opinion of the landlord may be calculated to disturb the comfort of any other occupant of the residential property shall not be made by a tenant or guest, nor shall any noise whatsoever, including the playing of any musical instrument be repeated or persisted after a request to discontinue such noise has been made by the landlord.*

The tenant or tenant's guest(s) shall not cause or allow loud conversation, music, television, radio, or an irritating noise to disturb the peaceful enjoyment of other occupants at any time, and in particular between the hours of 10:00pm and 9:00am.

The Warning Letter then addresses the Tenant, as follows:

[Tenant], Conduct in the lease agreement is one of the key material terms of your lease agreement and as discussed in the tenancy appointment on August 12th, it is a material term of the tenancy and should a tenant breach this term (among others) it would result in [the Landlord] ending your tenancy. We advise you that should there be any further breaches of your lease agreement, we may move towards eviction proceedings.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

In order to establish grounds to end the tenancy early under section 56 of the Act, the landlord must not only establish that they have 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 Landlord's undisputed evidence that the Tenant to have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. I find that the Tenant significantly interfered with or unreasonably disturbed another occupant or the Landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

I find the Landlord's undisputed evidence proves on a balance of probabilities that the Tenant assaulted women on both September 5, and September 21, 2022 – the latter being five days after the Warning Letter was issued.

I find such activities, along with police having to be called to the residential property multiple times would cause the Landlord, and other tenants to be fearful of the Tenant.

Due to these conclusions, I, therefore, find that the Landlord has proven that the Tenant significantly interfered with or unreasonably disturbed another occupant or the Landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord. Rather, the evidence indicates that the Tenant assaulted another person, by throwing her off the balcony.

I am also satisfied that it would be unreasonable and unfair to the Landlord to wait for the One Month Notice to End Tenancy to take effect, as I find without it, they are less likely to be able to protect other people on their property and protect their property from damage.

I therefore confirm the Landlord's Application to end this tenancy early, pursuant to section 56 of the Act, as well as their request to recover the \$100.00 Application filing fee, pursuant to section 72 of the Act.

Pursuant to section 56 of the Act, the Landlord is granted an **Order of Possession, effective two days** after it is deemed served to the Tenant, pursuant to the Act.

Further, the Landlord is authorized to deduct \$100.00 from the Tenant's security deposit in complete satisfaction of this monetary award.

Conclusion

The Landlord's Application is successful, as the Agent provided sufficient evidence to fulfill their burden of proof on a balance of probabilities. The tenancy ended on October 31, 2022, and the Tenant is overholding in the rental unit. The Landlord is also granted recovery of their **\$100.00** Application filing fee.

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.

I authorize the Landlord to retain **\$100.00** from the Tenant's security deposit, in satisfaction of the monetary award of recovery of the Application filing fee.

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: December 01, 2022

Residential Tenancy Branch