



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding THE ELIZABETH FRY SOCIETY OF GREATER
VANCOUVER and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

On April 25, 2023, the Landlord made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession pursuant to Section 56 of the *Residential Tenancy Act* (the “Act”).

V.L. attended the hearing as an agent for the Landlord, and she advised of the correct name of the Landlord. As such, the Style of Cause on the first page of this Decision has been amended accordingly. D.W. and I.B. attended the hearing later as witnesses for the Landlord. The Tenant attended the hearing as well.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also reminded that recording of the hearing was prohibited, and they were informed to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Prior to commencing the hearing, the Tenant requested an adjournment because she has “issues understanding things sometimes”, that she was working with a mental health counsellor, that this person was on holiday for two weeks, and that she does not understand the nature of the Landlord’s Application. She then testified that she received a letter from her psychiatrist yesterday that indicated that she was not receiving the mental health services that are required. However, she did not submit any documentary evidence to corroborate her health condition, she did not provide any documentary evidence of her counsellor not being available, nor did she submit anything from this

psychiatrist to substantiate any of her submissions. She also stated that she would need an adjournment until her mental health “stabilized”, and that this could possibly happen in approximately six weeks. However, again, there was no documentary evidence from any medical professional to support this assessment.

V.L. was then canvassed for the Landlord’s position on this request, and she advised that they would like to proceed due to the seriousness of the Tenant’s actions and behaviours. She testified that the Tenant was first warned in writing about her conduct on January 4, 2023, by email, that the Tenant has received further warnings by email in February, March, and April 2023, that the Tenant responded to these emails, and that a separate Dispute Resolution hearing was held on May 8, 2023, where her conduct was also discussed. As such, it is her position that the Tenant is well aware of the allegations of her behaviour.

The Tenant did not dispute these communications between her and the Landlord, nor did she disagree that she participated in a recent hearing that addressed allegations pertaining to her conduct.

Rule 7.9 of the Rules of Procedure (the “Rules”) provides the applicable criteria for the granting of an adjournment. As there was no documentary evidence to support the Tenant’s submissions, and as the Tenant recently attended a Dispute Resolution proceeding regarding her alleged behaviours, I am satisfied that the Tenant was fully aware of the nature of this dispute. As such, I am satisfied that adjourning the hearing, especially for a seemingly random suggestion of six weeks, would be prejudicial to the Landlord. Consequently, I did not grant the Tenant’s request for an adjournment. Moreover, it was clearly evident during the 81-minute hearing that the Tenant had no difficulties understanding or responding to the Landlord’s allegations against her.

V.L. advised that the Notice of Hearing and evidence package was served to the Tenant by email, and by being attached to the Tenant’s door, on April 28, 2023. The Tenant confirmed that this package was received; however, she was not exactly sure when this was other than it was “a week or two ago” and then “not last week, but the week before.” Given V.L.’s solemnly affirmed testimony that this package was served on April 28, 2023, in conjunction with the Tenant’s vague recollection of this package being received more than a week ago, I find it more likely than not that this package was served pursuant to V.L.’s testimony. As such, I am satisfied that the Tenant was duly served this package. Consequently, this evidence will be accepted and considered when rendering this Decision.

The Tenant advised that she did not submit any evidence for consideration on this file because she did “not know the process”; however, she confirmed that she had previously submitted evidence for the hearing that commenced on May 8, 2023. Although, she stated that she had another person help her with this.

As a note, after the hearing commenced, the Tenant advised that she would be recording the hearing, despite being informed prior to the commencement of the hearing, via the automated introductory message, that recording of the dispute resolution was prohibited and that all recordings are to be requested from the Residential Tenancy Branch directly. Both parties were also reminded by myself, at the start of the hearing, that recording was prohibited under Rule 6.11 of the Rules. The Tenant was then Ordered to stop recording, and was advised that it was unnecessary anyways as the hearing was already being recorded by the Residential Tenancy Branch.

Despite this Order, the Tenant refused to stop her recording. She was then informed that as per Section 95(3) of the *Act*, parties may be fined up to \$5,000.00 if they record the hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00.” As well, she was cautioned that the Compliance and Enforcement Unit of the Residential Tenancy Branch has the authority to conduct investigations under the *Act*, and also has the authority to levy penalties, or restrict services offered by the Residential Tenancy Branch, for significant violations or breaches under the *Act*. At this point, the Tenant stated that she had stopped recording; however, based on her ongoing demeanour, I am doubtful that this was truly the case.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 15, 2022, that rent was currently established at \$570.00 per month, and that it was due on the first day of each month. A security deposit of \$285.00 was also paid. A copy of a signed tenancy agreement was submitted as documentary evidence for consideration.

V.L. advised that, as noted earlier, the Tenant had been engaged in ongoing behavioural issues since at least January 2023, and she referenced the Chronology of Events, that was submitted as documentary evidence, to support this position. However, she specifically cited an incident at approximately 3:00 PM on April 24, 2023, where the Tenant was shouting threats and obscenities from her balcony at residents of the building. As well, she testified that the Tenant sprayed bear spray at other residents and children on the property. She stated that after this incident, the Landlord hired additional security to specifically patrol the third floor, as the other residents of this floor were so disturbed by the Tenant's continual behaviours. As well, she stated that the Tenant later emailed her on or around April 29, 2023, acknowledging that she needed to take her medication to control her outbursts. V.L. then submitted that two residents of the building had applied for protection orders against the Tenant as they were fearful for their safety. Some documentary evidence was submitted to corroborate her testimony.

D.W. advised that she was at work when she received text messages from her daughter and a neighbour, at approximately 1:50 PM on April 24, 2023, because the Tenant was outside the door of her unit yelling threats of violence. She stated that she informed V.L. of this incident and was advised to call the police. Given her concern for the Tenant's behaviour, she left work to return home, and she continued to receive texts updating her about the ongoing situation with the Tenant. She submitted that when she arrived home, the police were dealing with the Tenant regarding an incident where the Tenant allegedly threatened to "take care of" a man in the building "with what was in her purse". She testified that she was later standing in front of the building, talking to the maintenance manager, when the Tenant began yelling obscenities from her balcony and started spraying bear spray at them, and children, who were in the area.

She stated that the Tenant later came out to the front of the building, that she was screaming incoherently about guns, and that she yelled that she would “take care of the bitches”. She advised that the Tenant eventually returned to her rental unit, that she continued to scream, and that she threatened to jump from her balcony. She testified that the police returned, and that the Tenant threatened her and stated that her daughter was “fucking next”. She stated that the building was evacuated, and that the Tenant was eventually arrested by the police. She confirmed that she applied for a protection order against the Tenant. As well, she testified that the Tenant’s behaviours have not stopped, that the Tenant was actually stabbed by one of the Tenant’s guests, and that security guards now sit outside her unit in case of any incidents.

The Tenant advised that on April 24, 2023, she was in the elevator, while on the phone with her mother, when a man on the elevator heard her conversation and made some comment that she did not remember. She stated that she then responded, but she did not remember how, and that this man then stated that he was going to get his gun. However, she did not remember exactly what he said. She testified that he then came out with an “AK-47” so she called the police, but this gun later turned out to be a BB gun. Despite this, she claimed that this person was arrested.

She then stated that she never threatened the residents of the building or D.W.’s daughter, but she was warning all of them about this man with the gun. When she was asked what she was specifically yelling at people, she could not remember what she yelled “word for word”, but she yelled “something to that effect” that there was a man with a gun on the third floor. She stated that she never threatened to shoot D.W.’s child, that she does not own bear spray, that she was upset that the man with the gun was not arrested, and that she was subsequently arrested under the *Mental Health Act*. Also, she claimed that she had a witness who observed this incident; however, this person would not come forward.

D.W. reiterated that the incident with the Tenant screaming threats of violence occurred hours prior to the gun incident.

The Tenant responded that she was not home prior to the gun incident at approximately 3:00 PM, so D.W.’s testimony makes no sense.

V.L. then had I.B. provide testimony about a separate incident that allegedly occurred in March 2023, but it was unnecessary to detail this testimony here.

The Tenant provided final submissions where she stated that the Landlord has provided no documentary evidence of what was alleged. As well, she advised that there were many police officers at the scene for hours, and that she would have been arrested had she made those alleged threats against the other residents of the building.

Settlement discussions were attempted with the parties; however, they were unable to reach a mutually satisfactory outcome.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 56 of the *Act* establishes the grounds for the Landlord to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. In order to end a tenancy early and issue an Order of Possession under Section 56, I need to be satisfied that the Tenant, or a person permitted on the residential property by the Tenant, has done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

it would be unreasonable, or unfair to the landlord, the tenant 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.

When reviewing the totality of the evidence before me, I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Considered in its totality, I find V.L. and D.W. to be more credible witnesses than the Tenant. They provided consistent, logical testimony which was supported with documentary evidence where available. I found the Tenant's testimony regarding what she specifically and allegedly said to the man in the elevator, and to the residents of the building outside, to be vague and lacking in detail. Given that this happened mere weeks ago, I find it reasonable to conclude that the Tenant should have been able to speak directly to what she allegedly communicated, if it differed from the testimony of D.W.

Moreover, she initially claimed that the man allegedly wielding a gun was arrested; however, she then contradictorily testified that her behaviour was as a result of being upset because he was not arrested. I find that the vagueness of the Tenant's testimony, combined with the contradictions and inconsistencies in her testimony cause me to doubt the reliability of her testimony on the whole. Based on the foregoing, where the evidence of the parties clashed, I found the Landlord's version to be more credible.

When weighing the evidence on a balance of probabilities, I do not find any of the Tenant's testimony to be compelling, persuasive, or consistent when evaluated against the testimony of V.L. and D.W., and the corresponding evidence. Consequently, I prefer the Landlord's evidence on the whole. As such, I am satisfied that the Tenant has, more likely than not, engaged in a pattern of behaviour that was intentional, inappropriate, hostile, and malicious, and would fall into the categories of: significantly interfering with or unreasonably disturbing another occupant or the Landlord, seriously jeopardizing the health or safety or a lawful right or interest of the Landlord, engaging in illegal activity that 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, and engaging in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the Landlord. I do not find that these behaviours are in any way reasonable, appropriate, or acceptable.

The Landlord must also demonstrate that "it would be unreasonable, or unfair to the

landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 for cause” to take effect.

When assessing and weighing the totality of the evidence before me, I am satisfied that the Tenant has engaged in such an objectionable manner that should the tenancy continue, it is uncertain how much more dangerous the situation could become. In my view, it is clear that the Tenant has, more likely than not, continued to engage intentionally in troublesome behaviours and actions that are wholly inappropriate, and that these pose an unpredictable danger that would likely cause a genuine concern for the ongoing safety of the property and of any persons that may attend the property.

Under these circumstances described, I find that it would be unreasonable and unfair for the Landlord to wait for a One Month Notice to End Tenancy for Cause to take effect. For these reasons, I am satisfied that the Landlord has provided sufficient evidence to warrant ending this tenancy early. As such, I find that the Landlord is entitled to an Order of Possession.

Conclusion

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

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: May 17, 2023

Residential Tenancy Branch