

DECISION

Dispute Codes ET

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession to end the tenancy early.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, personally from the Landlord to the Tenant on April 24, 2010 and May 11, 2010. The Tenant confirmed receipt of the Landlord's amended application.

The Landlord and Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession under section 56 of the *Residential Tenancy Act*?

Background and Evidence

A male person signed into the hearing at 1:30 p.m. and advised that he was the Tenant. At 1:34 p.m. this person advised that he would be hanging up his cell phone and calling back on a land line. A male signed back into the hearing at 1:36 p.m.

The Landlord testified that a verbal month to month tenancy began sometime around March 5, 2010 however the Tenant was occupying the rental unit in February 2010 with the previous female tenant who has since vacated the rental unit. The rent is payable on the first of each month in the amount of \$650.00. A security deposit was not required by the Tenant as the Landlord and Tenant entered into a verbal agreement that the security deposit would be waived if the Tenant completed repairs to the unit.

The Landlord stated that he faxed the summons to the RCMP Detachment on Friday May 14, 2010 and then served it personally to the detachment on Saturday May 15, 2010.

The Landlord referred to his documentary evidence which included, among other things, a copy of a search warrant that was executed by the RCMP on March 18, 2010, a copy of a public complaint made by the Landlord against the RCMP, photos of the rental unit and surrounding areas which show needles, stereo equipment, and other items such as cabinets left on top of washers and dryers by the Tenant or his guests.

The Landlord confirmed that the rental unit is continuously occupied by up to ten people and there is constant traffic in and out of the rental unit. The Landlord argued that he has personally witnessed a female guest of the Tenant “bleeding and shooting drugs into her arm” after a rubber strap had been wrapped around her arm.

The Landlord testified that a search warrant was issued and executed on March 18, 2010, to search all areas of his fourplex and included a motor home placed on the property by the Tenant. Upon executing the warrant the police entered each rental unit and the Landlord’s residence forcibly, and took all occupants of the building, including the Landlord, and tenants from the other two rental units into custody.

The photo of the needle provided by the Landlord is a needle that was found by one of the other tenants who brought it to the Landlord stating she found the needle and that someone has entered her rental unit and taken some of her jewellery.

The Tenant began to provide testimony arguing that the search warrant was issued in the Landlord’s name not his.

At this time the Landlord stated that the person speaking in the hearing was not the Tenant and was in fact a different person. When I asked the male person to provide me with his date of birth he disconnected from the hearing which was at 1:55 p.m.

The Landlord continued with his testimony during the absence of the male person and confirmed that while the police have attended his residence in the past it was for domestic disputes between his two sons and that prior to this Tenant occupying the rental unit there was never police attendance for drug related calls. The Landlord stated that this situation has been very stressful for him and is now affecting his other tenants.

At 2:11 p.m. a male person dialled into the hearing claiming to be the Tenant. When I confronted this person stating that he did not have the same voice as the previous person who was signed into the hearing and the male argued that he was the same person and that his telephone was disconnected when police constable (Constable’s name) was asking him for his date of birth.

I then asked the male if he had any additional testimony he wished to present at which time he stated that a tenancy hearing should not be involving things that happen with other people who attend the rental unit and should only involve items with the Tenant. The Tenant confirmed that he owned the motor home that was placed on the Landlord's property and searched during the execution of the search warrant.

The Tenant then began to list off complaints he has relating to the condition of the rental unit at which time I explained to the Tenant that today's hearing was convened to hear testimony in relation to the Landlord's application and was not regarding a Tenant's application to request repairs to the unit.

Analysis

All of the testimony and documentary evidence was carefully considered.

A significant factor in my considerations is the credibility of the testimony provided by the alleged male Tenant. I am required to consider the Tenant's evidence not on the basis of whether his testimony "carried the conviction of the truth", but rather to assess his evidence against its consistency with the probabilities that surround the preponderance of the conditions before me. Throughout the course of the hearing different males signed into this hearing claiming to be the Tenant and when I confronted the male on the telephone the line was disconnected. Later a different male signed into the hearing and argued that he was disconnected from the hearing when constable (Constable's surname) was asking him his date of birth. I must note that there was never a police constable in attendance at the hearing and that it was I who was asking the Tenant to provide testimony so that he could be identified.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In the circumstances before me, I find that different males signed into this hearing purporting to be the Tenant.

Upon careful consideration of the evidence before me I find the Landlord has proven that the Tenant and/or his guests have engaged in an activity that has caused damage to the Landlord's property, has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property, and has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the Landlord.

Next I have considered whether it would be unreasonable or unfair to the Landlord to wait for a one month Notice to End Tenancy to take effect. I have accepted that the Tenant and/or his guests have engaged in activity that has ultimately caused damage to the rental unit and has jeopardized the lawful right or interest of the Landlord and the other tenants. Based on these conclusions I find it would be unreasonable to wait for a one month Notice to End Tenancy to take effect. The relationship is deteriorating and escalating with the possibility for the Landlord suffering further loss or damage. Therefore, I grant the Landlord's application to end this tenancy early.

Conclusion

I hereby grant the landlord an Order of Possession effective **immediately** after it is served upon the Tenant. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

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, 2010.

Dispute Resolution Officer