Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX KELOWNA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an order to end the tenancy early and obtain an Order of Possession, as provided under section 56 of the Act. Both parties appeared or were represented at the hearing. At the outset of the hearing, the purpose of the hearing was explained to both parties. The parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Procedural and Preliminary Matters

Two tenants appeared at the hearing and I noted the tenancy agreement was executed by two tenants; yet, the Application for Dispute Resolution named only one tenant. The landlord explained that naming only one tenant on the Application for Dispute Resolution was an oversight. Since both tenants appeared at the hearing, I amended the Application for Dispute Resolution so that the tenants are as reflected on the tenancy agreement.

It should be noted that this was a very difficult proceeding. Although I had explained the purpose of the hearing was to determine whether there were sufficient grounds to end the tenancy under section 56 of the Act, as the hearing progressed the landlord became increasingly frustrated and indicated the hearing should be no longer than a few minutes in duration since the tenants had not paid rent. I noted that this hearing did not concern unpaid rent to which the landlord stated he had originally wanted an Order of Possession for unpaid rent but that an Information Officer at the Residential Tenancy Branch had "directed" him to change the Application to seek an early end of tenancy. I had heard that the tenants had filed to dispute a 10 Day Notice to End Tenancy for Unpaid Rent and the parties have a hearing set for June 25, 2014. I informed the parties several times that the appropriate time to determine the matter of unpaid rent would be at that hearing. The landlord also objected when I provided information with respect to various provisions of the Act. As explained to the landlord, informing parties

as to their respective rights and obligations under the Act is often a component of a dispute resolution proceeding. The landlord also stated that I was biased given my tone of voice, the manner in which I spoke to him, and the fact that he had appeared before me in prior unrelated tenancy matters. Below, I have addressed the allegation of bias.

Residential Tenancy Policy Guideline 10: *Bias and Conflicts of Interest* deals with situations where a party to an arbitration alleges that the arbitrator is in a conflict of interest or is biased. The policy guideline provides, in part:

> An arbitrator will refuse to conduct a hearing if he or she is satisfied that there is a reasonable apprehension of bias. A reasonable apprehension of bias exists when an arbitrator is satisfied that a person who is informed of all the facts would reasonably conclude that there is an appearance of bias on the part of the arbitrator.
>
> A reasonable apprehension of bias may exist where the arbitrator has a personal or financial interest in the case which he or she is to hear.
>
> **What bias is not**
>
> The fact that one or both of the parties may have appeared before the arbitrator previously, or that the arbitrator previously denied an application by one of the parties, does not by itself support a claim of bias.
>
> If an allegation of bias or conflict of interest is raised at the hearing, the arbitrator will decide whether or not there is any basis to support the allegation and if he or she so concludes, will withdraw and forward the file to the Director for the assignment of another arbitrator.
>
> If the arbitrator concludes that there is no reasonable apprehension of bias then the hearing will proceed and this will be noted in the arbitrator's decision.
>
> [my emphasis added]

I could not recall any specific details of proceedings where the landlord may have appeared before me before. Further, having no personal or financial interest in this case, I concluded that I was not biased and the landlord's allegation of such has been duly noted in this decision.

Issue(s) to be Decided

Has the landlord proven that this tenancy should end early and the landlord should be provided an Order of Possession under section 56 of the Act?

Background and Evidence

The tenants and the owners executed a tenancy agreement for a month-to-month tenancy that commenced November 1, 2013 for the monthly rent of $1,100.00 due on the 1st day of every month. The rental unit is located in a duplex style building on the residential property and the other side of the duplex is also tenanted. In late April 2014 the owners of the property contracted with the current property management company (referred to as the landlord in this decision) to manage the residential property.

The landlord submitted that shortly after taking over management of the property problems arose with the male tenant in particular. The landlord issued a 1 Month Notice to End Tenancy that was dated April 30, 2014. The landlord also issued a 10 Day Notice to End Tenancy for Unpaid Rent dated May 2, 2014. On May 7, 2014 the tenants filed to dispute both Notices to End Tenancy and sought monetary compensation in their Application that is set to be hearing on June 25, 2014.

On May 13, 2014 the landlord filed this Application for Dispute Resolution seeking to end the tenancy early. The landlord was asked to provide reasons for seeking an early end to the tenancy. The landlord's first reason for ending the tenancy concerned rent; however, since rent is not a basis for ending a tenancy early under section 56 I have not listed that reason below. Rather, I have listed the other reasons given by the landlord that may be a basis to end a tenancy under section 56 of the Act:

1. The neighbours feel threatened by the tenant. The landlord was asked to identify the neighbours to which he was referring. The landlord declined to identify which neighbours were alleging threats were made by the tenants. Rather, the landlord would only say they are people living in the neighbourhood. The landlord did not provide any specifics as to the nature of the threats made by the tenants.
2. The landlord has been threatened by the tenant and in response the landlord contacted the police. The landlord stated the police attended the property with the landlord so that the landlord could serve documents upon the tenants and did so because of the tenant's criminal history. The landlord was asked to give a specific example of the threats made against him that caused him to call the police. The landlord described a verbal conversation where the tenant told the

landlord that if he came on to the property “you will see what happens”. The landlord provided a police file number but stated he was unable to obtain a police report that corresponds to that police number. The landlord requested that I speak with one of three police officers familiar with the tenant’s conduct but then stated the police offers were all off-duty at the time of the hearing. The landlord declined an offer to adjourn the hearing so that the police officers may be called as witnesses.

3. The tenant has denied the landlord entry into the rental unit. The landlord stated that he served the tenants with a notice of entry and in response the tenant communicated to the landlord that he is not to enter the property while he is out of town or else the tenant would press criminal charges.
4. The tenant has damaged the property. Initially, the landlord testified that there are broken “windows”; however, when I asked the landlord to identity which windows were broken he stated that is aware of one broken window that is adjacent to the front door.

The landlord’s documentary evidence included two text messages sent to the landlord by the tenant. They read:

> “Not a chance I will be living here forever. Also please make sure Al and tim pay there $9000 invoice.”
>
> “Enough with the bullshit. Let me live my life in peace.”
>
> [reproduced as written]

The tenants provided the following responses to the landlord’s submissions:

1. The tenant denied threatening any neighbours and is unsure as to which neighbours the landlord is referring. The tenant stated that the people living in the adjacent unit say “hi” to him on a daily basis and another neighbour freely approached him a couple of days ago and they had a conversation about vehicle rims.
2. The tenant denied having a criminal record and denied making threats to the landlord.
3. The tenant acknowledged a conflict concerning the landlord’s attempts to access the rental unit. The tenant denied receiving a notice of entry and the landlord had indicated to him that he would enter the unit anyway. The tenant considers this to be a “break and entry” which is a criminal activity.
4. The tenant acknowledged that the window beside the front door was broken accidently while he and his wife (the co-tenant) were moving a second washing machine into the rental unit. The tenant provided photographs of the broken

window, showing that he taped cardboard to the inside of the window, along with evidence that a second washing machine has been brought into the rental unit. The tenant explained that he brought a second washing machine into the property so as to wash his very dirty work clothes in this secondary washing machine. The tenant also stated that he intends to repair the broken window in the coming week.

After the tenants had an opportunity to be heard, the landlord requested that I call his partner as a witness, which I did. Both parties were provided the opportunity to ask questions of the witness.

The witness testified that she has heard every telephone conversation between the landlord and the tenants as all calls are on speakerphone. The witness stated the tenant made threats toward the landlord. The witness was asked to elaborate as to what she heard the tenant say to the landlord. The witness stated the tenant threatened to “kill or slit the throats” of the landlord’s children. When the landlord and witness contacted the police about this threat the police indicated they were aware of the tenant’s tendency to be drunk and disorderly.

The tenant strongly objected to allegations he threatened to kill or slit the throats of the landlord’s children. The tenant suggested that if he had made such threats the police would have arrested or charged him accordingly. Since he was not arrested or charged the tenant submitted that this is because he did not make those threats to the landlord.

The witness stated that the neighbours living in the adjacent unit communicated to her how they are uncomfortable around the male tenant, especially when he is drinking. Upon questioning by the tenant, the witness acknowledged that she is unaware that the adjacent unit neighbours speak to the tenant on a daily basis. The witness went on to state on two occasions that her primary main concern with this tenancy is collecting the unpaid rent.

Further, the witness stated the male tenant has called the landlord several times in one day and uses vulgar language.

The tenant was of the position the allegations of threats is an attempt to end the tenancy before dealing with the hearing scheduled for June 25, 2014. The tenant had also included text messages in his evidence package. Most notably, after texting the landlord that he has filed to dispute the Notices to End Tenancy and the hearing is set for June 25, 2014 the landlord responded on May 10, 2014 with a text message that states:

"You will receive writ of possession way before that, and we will have you physically removed if necessary. No matter what you think the owner owes you, rent must still be paid. I've been in business for 15 years and have seen something like this before, I would suggest packing your things up, fix the front..."

Analysis

Section 56(2) of the Act permits an Arbitrator, as delegated by the Director, to make an order to end the tenancy on a date that is earlier than the effective date on a 1 Month Notice to End Tenancy for Cause had one been issued. In order to grant an order to end the tenancy early the landlord must prove the following:

> (a) the tenant or a person permitted on the residential property 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.

[my emphasis added]

Paragraph (a) above provides the same reasons for ending a tenancy as are provided for ending the tenancy for cause under section 47 of the Act; however, section 56 provides landlords with an avenue to end the tenancy much earlier than by way of a 1 Month Notice issued under section 47. This remedy is intended to apply in the most severe of circumstances. As such, the landlord bears a high burden to prove the tenant has acted in such a way as to give the landlord not only cause to end the tenancy but that the tenant's actions are so severe that the tenancy must end very quickly.

With respect to burden of proof, where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their burden and they will not succeed.

Upon consideration of everything presented to me, I find the landlord has not met the burden of proof that this tenancy should end early under section 56 of the Act. In making this determination I have considered that:

1. I was provided largely disputed verbal testimony by the landlord and the tenants;
2. The landlord's testimony and his witness' testimony concerning threats toward the landlord were extremely different.
3. The text messages sent to the landlord by the tenant do not include any threats.

In addition, I find the one broken window does not constitute "significant damage" to the property and the tenant provided a reasonable explanation that the window was broken accidently which he stated he intends to fix this week.

I find it more likely the primary dispute between the parties concerns unpaid rent as this was the first reason cited by the landlord in giving reasons for ending the tenancy; the primary concern identified by the landlord's witness; and, consistent with the text message sent to the tenant by the landlord on May 10, 2014. I note that in that text message the landlord speaks of rent and instructs the tenant to repair the broken window, but there is no reference to threats toward him or the neighbors. As I informed the parties at the outset of the hearing, applications for an early end of tenancy are not to be used to obtain a hearing much quicker than hearings scheduled for unpaid rent or other issues. Such attempts to jump the queue ahead of others with those same issues may be seen as an abuse of process.

In light of the above, I decline to grant the landlord's request for an order to end the tenancy early under section 56 of the Act.

I make no award for recovery of the filing fee.

Conclusion

The landlord's application has been dismissed in its entirety.

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: June 09, 2014

Residential Tenancy Branch