



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kermadec Holdings LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **ET, FFL**

Introduction

This expedited hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An early termination of a tenancy and an Order of Possession for an immediate and severe risk pursuant to section 56; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open throughout this 20 minute hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing, represented by IR ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she sent the tenant the notice of expedited hearing via registered mail to the tenant's residential address on January 13, 2021. The tracking number for the mailing is recorded on the cover page of this decision and the landlord has filed a copy of the proof of service. I deem the tenant served with the notice of expedited hearing on January 18, 2021, five days after it was sent by registered mail pursuant to sections 89 and 90 of the Act .

Issue(s) to be Decided

Does the tenant pose an immediate and severe risk to other occupants of the residential premises or to the landlord's property?

Background and Evidence

The landlord gave the following undisputed evidence. The rental unit is one of 10 units in a small building with 3 levels. The tenant's unit is side by side with 2 other units located in the back area of the building. The month to month tenancy began on September 1, 2011 and rent is currently \$550.00 per month payable on the first day of each month. A security deposit of \$245.00 was collected from the tenant which the landlord continues to hold.

The landlord testified that she has received several complaints about this tenant. Between the period of December 7-24, the police were called to the building by other tenants regarding this tenant on 4 separate occasions.

On December 7, 2020, the tenant kicked down the door to his neighbour's unit. The damage to the door was so extensive that the door would no longer close properly and the door had to be replaced. The occupant in that unit sent an email to the landlord (provided as evidence) stating that the tenant next door came to his door yelling obscenities while the occupant was watching tv. The occupant asked the tenant to leave and the tenant proceeded to smash his door. The police were called that night and the tenant was taken away. Photos of the door were supplied as evidence.

The occupant residing on the other side of the tenant was also disturbed by the same tenant who knocked on his door on December 7th. The tenant accused this occupant of trying to poison him with ammonia solvents. When this occupant closed his door on the tenant, the tenant yelled and threatened him, saying *"I'm coming for you [expletive] your time is up, go back to where you came from"*. Later that night, this occupant heard the tenant threaten to kill the other occupant whose door was smashed in.

On the night of December 23rd, the tenant threw objects at the door of the occupant he accused of trying to poison him. The landlord testified the tenant was swearing at the occupant and calling him racial slurs at the time. The tenant damaged the neighbour's door and photos of the damage were supplied. The occupant states in his email to the landlord that he heard a heavy object strike his door just after hearing the tenant threatening him. The tenant was again accusing the occupant of conspiracies against the tenant and made threats to kill the occupant. The landlord testified that she replaced the occupant's glass door with a solid door because the occupant was fearful of the tenant's threats and how close the heavy object thrown by the tenant came to breaking the glass. That tenant writes, *"...recently it has escalated to physical damage of property to the point where I'm afraid to confront the situation as it happens; in case he gets physical with me"*

Lastly, the landlord testified that the tenant damaged the fire detector in his own unit. It was smashed by the tenant. The landlord testified that the tenant claimed to others that it was an accident caused by his guitar, however the landlord doesn't believe this to be true. The entire building was without fire safety controls for a day while the system was reset, causing further threat to the safety of the building occupants.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that 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.

Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] provides further clarification at part B:

... there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an

imminent danger to the health, safety, or security of a landlord or tenant, or a tenant has been denied access to their rental unit. (bold emphasis added)

...

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's testimony was undisputed by the tenant. I have read the statements provided by each of the tenant's neighbours and I find the tenant acted aggressively and without provocation when he kicked down that occupant's door on December 7th. No tenant should be fearful of their neighbour who is acting erratically, threatening his safety and yelling obscenities at him.

I find the tenant's behaviour in accusing the occupant in the other unit beside him to be both irrational and dangerous as well. False accusations that occupant of trying to poison him with ammonia solvents were made and racial slurs were uttered before the tenant threw an object at that occupant's door, almost breaking the glass. The evidence supplied by the landlord corroborates her testimony that the dangerous actions of the tenant causes his neighbours to fear him. From kicking in the door of one unit to throwing an object to another unit, it is clear to me that the tenant's aggressive activities are escalating.

Lastly, the incident of December 27th where the tenant smashed his fire detector, causing the building's fire safety system to go offline is a further example of the danger posed by the tenant. For each of these incidents, I find the tenant poses an immediate an imminent danger to the health and safety of the remaining residents of the property. The tenant has significantly interfered with or unreasonably disturbed another occupant of the residential property and that it would be unreasonable or unfair to the other occupants of the residential property to wait for a notice to end tenancy given under section 47 to take effect. Based on these findings, I grant the landlord an early end to tenancy pursuant to section 56 of the Act. The landlord is awarded an order of possession effective 2 days after service upon the tenant.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application. The landlord is at liberty to retain \$100.00 of the tenant's security deposit in accordance with the offsetting provisions set out in section 72 of the Act .

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced through 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: February 02, 2021

Residential Tenancy Branch