



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with a landlord's application for an order to end the tenancy early and obtain an Order of Possession made under section 56 of the Act.

Both the landlord and the tenant appeared for the hearing. The parties were affirmed and the parties were ordered to not record the proceeding. I explained the hearing process to the parties and I gave the parties the opportunity to ask questions about the process. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the landlord posted the landlord's proceeding package and evidence on the door of the rental unit and the tenant received the materials.

The tenant did not submit or serve any evidence prior to the hearing; however, the tenant stated that had he more time he would have submitted a statement from the RCMP concerning his release from police custody without charges or conditions. I informed the tenant that I would permit the tenant to provide such evidence orally during the hearing.

The tenant also stated early in the hearing that he is going to vacate the rental unit no later than September 1, 2021 as he has secured new living accommodating for that date. Given the tenant's willingness to vacate the rental unit, I tried to facilitate a mutual agreement between the parties as to the date the tenant may continue to occupy the rental unit; however, the parties could not reach an agreement. I proceeded to hear the matter and cautioned the parties that in the absence of a mutual agreement I would make the determination as to whether the tenancy ends and if it does, on what date.

Both parties indicated they understood the consequences of not resolving this matter by way of a mutual agreement.

Issue(s) to be Decided

Has the landlord established that the tenancy should end early and the landlord is entitled to an Order of Possession under section 56 of the Act?

Background and Evidence

The parties executed a written tenancy agreement in July 2018 for a tenancy set to commence on August 1, 2018 or September 1, 2018. The tenant paid a security deposit of \$475.00 and is required to pay rent of \$950.00 on the first day of every month. The tenancy is on a month to month basis.

The rental unit is described as a basement suite and the landlord's daughter and son-in-law are tenants occupying the upper level of the house.

The landlord made this application following the incidents of May 31, 2021. Below, I describe the parties' respective version of events as it pertains to those incidents.

The landlord submitted that on May 31, 2021 the tenant sent him and the tenants upstairs text messages threatening to destroy the house by way of setting it on fire. The RCMP were called by the landlord's daughter and after showing the RCMP officer the text messages, the tenant was arrested for mischief. The tenant was held in police custody and released some time later.

The landlord provided as evidence some of the text messages he received and that received by the upstairs tenants.

The landlord received the following messages (reference to landlord's name omitted by me for privacy purposes):



The messages sent to the upstairs tenants were as follows (with reference to landlord's name omitted by me for privacy purposes):



The landlord also provided a written statement from the RCMP. In part, the RCMP officer wrote:

COM showed police the text messages from the tenant, stating that he was going to burn the house down and to let the landlord know about it. Police went and talked to the subject and arrested him for mischief. Police went inside the house and saw that there was no signs that a fire had been started. COM stated that she was fearful for her safety for tonight as she thought that he might start a fire. Tenant was arrested and placed in the transport vehicle to be taken to cells. When back at Burnaby Main detachment the tenant became more belligerent and it was determined that he was too intoxicated to speak to a lawyer. He was lodged into cells to be released when sober.

The landlord submitted that the upstairs tenants are fearful that the tenant will set fire to the house and, as a result, they are staying on the floor of friends until the tenant vacates the rental unit. The upstairs tenants also removed their more valuable possessions from the residential property out of fear the tenant may set fire to the house and destroy their belongings.

The landlord stated that while he appreciates the tenant may have to move twice if he is evicted before September 1, 2021 the landlord has an obligation to protect the other tenants and the property from harm; and, it is unreasonable to expect the other tenants to live in fear of when/if the tenant will set fire to the house, or continue to be inconvenienced by living elsewhere, if the tenant is afforded until September 1, 2021 to move out.

The tenant did not deny sending the text messages to the landlord and the upstairs tenants. The tenant stated that he had received a *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") at the end of April 2021 or early May 2021 and although he filed to dispute the 2 Month Notice shortly afterwards, he became more depressed and upset over the prospect of having to move out as he had spent money improving the rental unit only for it to be rented to someone else. The tenant claimed that he started drinking and the drinking coupled with his depression resulted in him sending the text messages on May 31, 2021.

The tenant testified that he was released from police custody without any conditions or charges. Further, since May 31, 2021 there has been no contact with the upstairs tenants or the landlord. The tenant testified that after the incident he sought counselling, took medication, and got sober. The tenant also submitted that he has not caused any damage to the rental unit and the landlord is at liberty to come inspect the unit.

The tenant submitted that moving before September 1, 2021 will cause him financial hardship and contribute to his depression. In any event, the tenant is of the position that his actions do not constitute an urgent and severe that is required to be evicted under section 56 of the Act.

Analysis

Under section 56 of the Act, the Director, as delegated to an Arbitrator, may order the tenancy ended earlier than if the landlord had issued a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") and grant the landlord an Order of Possession. The landlord must demonstrate cause for ending the tenancy and that it would be unreasonable to wait for a 1 Month Notice to take effect.

Below I have reproduced section 56 of the Act:

- 56** (1) A landlord may make an application for dispute resolution to request an order
- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and
 - (b) granting the landlord an order of possession in respect of the rental unit.
- (2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,
- (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 underlined]

Section 47 of the Act provides a mechanism for landlords to bring a tenancy to an end where the tenant has given the landlord cause to end the tenancy. A notice given under section 47 affords the tenant at least one full move to vacate the rental unit. Section 56 also requires that the tenant has given the landlord cause to end the tenancy; however, the seriousness of the alleged offence permits the landlord to have the tenancy ended with less than a month's notice. Accordingly, section 56 is intended to apply in the more urgent and severe circumstances.

In this case, it is unopposed that the tenant sent text messages to the landlord and to the landlord's daughter and son-in-law, who reside in the living unit above the rental unit, stating he was going to destroy the house and set it on fire. I can think of few threats more frightening than to have one's home set on fire. I heard unopposed testimony that the occupants of the upper unit have been staying elsewhere while the tenant remains in possession of the rental unit for fear of the house being set on fire. In this situation I find the tenant's actions have unreasonably disturbed or significantly interfered with the other occupants of the residential property and the tenant has given the landlord cause to end the tenancy.

Having been satisfied the tenant has given the landlord cause to end the tenancy, I consider whether the situation warrants ending the tenancy without the notice that would be given by way of a 1 Month Notice issued under section 47 of the Act.

The tenant asserted that he sent the text messages after being served with a 2 Month Notice by the landlord; however, I note his threats came approximately one month after the 2 Month Notice was served and the tenant had filed to dispute the 2 Month Notice and had a hearing set for late August 2021. Given the tenant had taken advantage of his right to dispute the 2 Month Notice, and retained the right to occupy the rental unit while awaiting for that dispute to be concluded, I find it is illogical and irrational that the tenant would proceed to make threats to destroy the property by setting it ablaze. I find it especially aggravating that he would threaten to set fire to the house when it is occupied by other people.

The tenant blamed his depression and drinking alcohol as the reason he made the threats and claims to be sober now. However, a landlord has a lawful duty to protect the quiet enjoyment of all of its tenants and I find the tenant's oral assurances that he got sober to be of little comfort that he will not start drinking again when something else agitates him.

The tenant also pointed out that he was released from police custody without being charged and without conditions. However, it is important to point out that the lack of a criminal charge is not dispositive as the burden of proof in a criminal matter is much higher than the civil standard which is the standard that applies in tenancy disputes.

In light of all of the above, I find it would be unreasonable to wait for the tenant's new accommodation to become available to him before the tenancy is ended especially when I consider the other tenants of the property are residing elsewhere due to the tenant's actions. Therefore, I find the landlord has satisfied me that the subject tenancy should be ended early and I provide the landlord with an Order of Possession under section 56 of the Act.

I appreciate this decision may aggravate the tenant, and given the seriousness of the tenant's threats on May 31, 2021, I find it appropriate to issue an Order of Possession that is effective two (2) days after service.

In keeping with the above, I order the tenancy ended effectively **two (2) days after the tenant is served with the Order of Possession** that accompanies this decision.

Conclusion

Pursuant to section 56 of the Act, I order **the tenancy is ended effective two (2) days after the tenant is served with the Order of Possession** that accompanies this decision.

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: July 14, 2021

Residential Tenancy Branch