



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Magnolia Apartments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This expedited hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an early termination of the tenancy and an order of possession – as the Tenants pose an immediate and severe risk to persons and/or property; and to recover the \$100.00 cost of their Application filing fee.

Two agents for the Landlord, C.P. and A.H. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only persons to call into the hearing were the Agents, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, were the Agents.

I explained the hearing process to the Agents and gave them an opportunity to ask questions about it. During the hearing, the Agents were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenants did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that she served each Tenant with the Notice of Hearing documents by posting them in an envelope on the rental unit door on September 10, 2021. The Agent submitted a photograph of an envelope taped to the rental unit door as proof of

service. She also submitted a Proof of Service form, which states that C.P. observed A.H. attach the package documents – one each – for the Tenants, H.N. and M.P.

The Landlord submitted additional evidence on September 17, 2021, which she said was served to the Tenants on the same day by posting the envelopes of evidence on the rental unit door. I find that this evidence was deemed served by the Act on September 20, 2021; however, Rule 10.2 states:

10.2 Applicant's evidence for an expedited hearing

An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.

The Landlord applied for this expedited hearing on August 31, 2021; therefore, I find that this additional evidence was not served in compliance with the Act and Rules. Accordingly, I have not considered this extra evidence in making my Decision.

I find that the Tenants were deemed served with the Notice of Hearing documents and initial evidence in accordance with the Act. I, therefore, admitted the Application and initial evidentiary submissions, and I continued to hear from the Agents in the absence of the Tenants.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and the Agent confirmed their address in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Agent that pursuant to Rule 7.4, I would only consider the Landlord's written or documentary evidence to which the Agents pointed or directed me in the hearing. I also advised the Agents that they are not allowed to record the hearing. The Agents confirmed that they were not recording the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to an early termination of the tenancy agreement, and an order of possession?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Landlord submitted a copy of the Parties' tenancy agreement, and the Agent confirmed in the hearing that the periodic tenancy began on July 1, 2019, with a monthly rent of \$1,050.00, due on the first day of each month. She confirmed that the Tenants paid the Landlord a security deposit of \$525.00 and later a pet damage deposit of \$525.00. The Agent said that the Landlord still holds these deposits in full.

In their Application, the Landlord said:

[H.N.] of [the rental unit] has been threatening and harassing the new tenants in [another unit] since a dispute over street parking occurred. An incident reported to the property manager on August 21st, 2021 (as outlined in the proof of threat evidence) resulted in [H.] pulling out bear mace and a knife to threaten the tenants in [another unit] along with threatening the lives of the female tenants ([S. and R.]). Police were called and attended this incident.

In the hearing, the Agent said:

These Tenants have been long-term, with issues since the beginning. They had lived in a larger unit with a roommate, but that tenancy didn't go well. Their cars were lit on fire. There was drug dealing involved. I have been here for the last year, and we have received several complaints in the year on the property. The most recent incidents are with the tenants in [another unit], who moved in on May 1st. Their behaviour has become increasingly violent and harassing. I can't risk having them on the property.

The Agent submitted a copy of an email dated March 27, 2021 that they received from another tenant in the residential property. This email stated:

Re: Request for Action re: Police Incident at [residential property address]

On Friday night, the tenant in apartment number [rental unit] was in an altercation with a person I have never seen before. The pair's argument awoke my wife and I around 12:30am. From our window, we could see that the tenant was standing on the building's western walkway (directly below our bedroom window) yelling at the other man who was standing in the street. The tenant had a baseball bat and repeatedly threatened to assault the other man. In turn, the other man was

holding a stick or pipe and was threatening to respond in kind. In addition to the threats of violence, various racial slurs, expletives, and disparaging remarks were exchanged between the two men. Between their insults and posturing, the tenant was repeatedly demanding payment. I don't know what the payment was for. After five minutes of arguing, numerous people emerged from our building and neighbouring houses and the police arrived. I'm not sure how the altercation was handled by the police because I went back to sleep.

This is the second time this week that the police have approached the tenant from apartment [rental unit]. On [or] about Wednesday at 6:00pm, I was approached by a police officer who asked if I was 'associated' with the tenant's vehicle. Shortly afterwards, I saw the police speaking with the tenant in the street. While walking our dogs, I later saw the tenant leave our building while fingering the apartment building to the south-west of ours.

While the Wednesday incident likely concerned the tenant's poorly parked vehicle, the incident last night is serious. It made my wife feel unsafe. We request that [the Landlord] take steps to review this matter with the tenant and take all reasonable steps necessary to ensure it doesn't happen again.

The Landlord submitted a copy of an email dated August 21, 2021 from the tenants in a nearby unit, who are having trouble with the Tenants. This email includes the following:

Hello [Agent], Two nights ago we had a very bad interaction with [H.N.] where I had to call the police again on him. This time he had pulled two weapons on [S.] and I around 12pm. I have both police report file numbers for you [two police file numbers].

. . .

The most recent police call was due to him being aggressive. [S.] and I were sitting outside and hanging out when [H.N.] started walking by. He had left a note on my car that day but this time he had glued it to my windshield. I asked him very politely if we could talk and try to put all of it in the past and be able to just live peacefully. He then started screaming at [S.] and I and was clearly on drugs or drunk or just extremely unstable. Everything kind of escalated from there and he started walking backwards and he had pulled out a can of bear mace and threatened to mace us. That's when [S.] and I were so angry and confused as to why he felt the need to EVER pull a weapon on us. There was a bit of yelling back and forth between us until he pulled a big knife or a machete looking object,

and that was when a neighbour who seems to be friends with [H.N.] came out and told him to leave us alone. He then proceeded to tell us not to call the police, because [H.N.'s] going through a 'rough patch' and I told him I don't have any sympathy for [H.N.] after all he's done is non stop harass and now threaten myself and my roommate with weapons. The neighbour tried to convince us to not tell the police or the landlord for some time but as soon as he left I called the police and they came to take my statement . They asked me if I would like to press charges but I know that process would be extremely long and difficult. I would rather give all this information to you and hope to god you see that [H.] is not the kind of person you want living in a family environment. He is clearly dealing drugs. He constantly has his face swollen from beatings and missing teeth. He is constantly screaming in the middle of the night at random strangers walking by. He has threatened my life as well as [S.'s].

...

[R.]

The Agent said that they have spoken to the Tenants "on multiple occasions in person, on the phone, by email, and they have received breach letters in the past year, as well," she said.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

In order to establish grounds to end a tenancy early under section 56 of the Act, a landlord must not only establish on a balance of probabilities that they have cause to end the tenancy, but that it would be unreasonable or unfair to require the landlord or other occupants to wait for a notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the testimony of the Landlord, I find that they have met that burden.

I accept the Landlord's undisputed evidence that the Tenants or someone they have allowed on the property to have significantly interfered with or unreasonably disturbed another occupant and the Landlord of the residential property.

I find the Landlord submitted sufficient evidence that the Tenant, H.N., has unreasonably disturbed other tenants with yelling, swearing, and other aggressive behaviour, including having threatened other tenants with weapons. I find that such

behaviour, along with the police having to be called to the residential property multiple times, would cause the Landlord, and other tenants to be unreasonably disturbed.

I also accept the Landlord's undisputed evidence that the Tenant's behaviour would put the other tenants and the Landlord's property at significant risk.

I am also satisfied that it would be unreasonable and unfair to the Landlord to wait for a One Month Notice to End Tenancy for Cause to take effect, as I find without an early end to this tenancy, further incidents are likely to occur, and someone could be injured.

I therefore confirm the Landlord's Application to end this tenancy early and I grant the Landlord an **Order of Possession**, pursuant to section 56 of the Act. I also confirm the Landlord's request to recover the \$100.00 Application filing fee, and I award them with **\$100.00** from the Tenants, pursuant to section 72 of the Act. The Landlord is authorized to retain \$100.00 from the Tenants' security deposit in complete satisfaction of this award.

Conclusion

The Landlord's Application is successful. The Agents provided sufficient evidence to prove on a balance of probabilities that the Tenants have significantly interfered with or unreasonably disturbed another occupant and/or the Landlord of the residential property. The Landlord is, therefore, awarded an Order of Possession in this regard.

Further, the Landlord is awarded recovery of their \$100.00 Application filing fee, pursuant to section 72 of the Act. I authorize the Landlord to retain \$100.00 from the Tenants' security deposit, in complete satisfaction of the monetary award for recovery of the Application filing fee.

Pursuant to section 56 of the Act, I grant an **Order of Possession** to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible.

Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the

Act, and 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: September 24, 2021

Residential Tenancy Branch