



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bakonyi Holdings Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

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

- an early termination of tenancy and Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant and an agent for the landlord (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

The agent testified that the landlord's application for dispute resolution and evidence were posted on the tenant's door on September 24, 2021. The tenant confirmed receipt on or around that date. I find that the landlord's application and evidence was served on the tenant in accordance with sections 89(2) and 88 of the *Act*. I accept the landlord's evidence for consideration.

The tenant testified that he did not serve the landlord with his evidence.

Rule 10.5 of the Residential Tenancy Branch Rules of Procedure states:

10.5 Time limit for respondent's evidence

The respondent must ensure evidence they intend to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible and at least two days before the hearing.

I find that the tenant did not serve the landlord with the tenant's evidence in accordance with Rule 10.5. The tenant's evidence is therefore excluded from consideration.

Issues to be Decided

1. Is the landlord entitled to an early termination of tenancy and Order of Possession, pursuant to section 56 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed that this tenancy began in April of 2021 and is currently ongoing. The landlord testified that the rent is due on the first day of each month. The tenant testified that rent is due between the 8th and 15th of the month. Both parties agree that rent is \$1,200.00 per month. Both parties agree that the tenant paid the landlord a security deposit of \$600.00.

The agent testified that the landlord is seeking an emergency end to this tenancy because of the gun and knife violence associated with the tenant. The agent testified that since the tenant moved in the police have been called to the subject rental property approximately four times per week regarding violent altercations, drugs and noise complaints. The agent testified that many violent incidents involving the tenant and his guests have occurred. The agent provided the following testimony regarding the most recent incidents involving the tenant and his associates:

- July 4, 2021: physical altercation at the subject rental property resulting in several arrests
- July 5, 2021: tenant served a One Month Notice for Cause for repeatedly letting street people into the building and allowing homeless people to sleep on the couch on his patio.
- July 7, 2021: police called due to homeless people sleeping on tenant's patio
- July 30, 2021: the tenant's room mate struck the agent on the back of the head while the agent was programming the building intercom.
- September 2, 2021: multiple people were stabbed or shot in and around the subject rental property. The police attended and two individuals were taken to hospital. Police confirmed the people involved are known associates of the tenant and are known to police.
- Approximately two weeks ago the tenant's wife threw a rock through the tenant's picture window.
- Approximately one week ago assailants armed with a machete forced entry into another apartment in the subject rental building looking for the tenant. The police confirmed the assailants were looking for the tenant.

The agent testified that the issues with the tenant are never ending and all the other tenants in the subject rental building are in danger because of the tenant and the tenant's associates.

The agent entered into evidence complaints from other residents of the subject rental building about the tenant. The following are some excerpts from the complaint letters and emails:

- "...we have tenants living below us in [the subject rental property] who are noisy all night. People are coming and going all the time. They are dealing drugs and sleeping on the lawn or the couch that is outside their door. I am a senior and I am having trouble sleeping out of fear of these people climbing up to our balcony and breaking in.....P.S. sexual activity on the grass as well.
- "...Since [the tenant's] arrival a couple months ago the tenants of [the subject rental property] have been nothing but a problem. People are dealing drugs and yelling at all hours of the night. I've personally witnessed numerous overdoses, have had to called the police twice, 2 days ago on July 27th myself and another tenant [redacted for privacy] we're confronted in the parking lot by the occupants and again had to call the police and give a statement. It is getting to the point where I fear for the safety of my wife and child along as other women and children in the building...."

- "...over the past few month since these tenants have moved in things have been progressively getting worse around them and the building. Not only have the police been called to their apartment for multiple things they have had people overdosing in their suite. They constantly allow other street people into the building, they have followed me into the elevator and right up to my door, leaving me feeling increasingly scared and nervous..... I have also come in contact with people using drugs in the stairwell and am concerned that if it is a bad trip they may also harm myself or one of our older tenants. I have been followed when leaving the building to walk [on the street]. Propositioned to come hang out or asked ffg or money....
- "...[the subject rental property] is right below me and I see various goings on there quite frequently. There are constantly people screaming at other tenants from other suites in the building, the police have been involved and make visits there multiple times a week. Last night they were yelling and threatening to physically harm people who live in [the subject rental building]. Approximately a week ago there were 4 SUV police vehicles that stopped traffic on [the street] as there was a fight that broke out just outside [the subject rental apartment] with multiple people who were involved in the altercation that lasted a good two hours. There are always people sleeping outside their suite who do not live there and are posing a risk to the other tenants in the building as they can gain access to the building through that suite. There is drug paraphernalia strewn on various side walks around the building....

The tenant testified that the agent is lying about him. The tenant testified that the police attend approximately four times per week because the agent makes up lies about him and lies to the police.

The tenant testified that he is working on having the window his girlfriend broke fixed and that she broke the window because she was upset about the eviction notice. The tenant testified that his girlfriend feels like the landlord is stealing from them.

When asked about the July 30, 2021 incident reported by the agent, the tenant testified that his former roommate was aggressive and loud and that he is glad he moved out.

When asked about the September 2, 2021 incident reported by the agent, the tenant testified that it was a home invasion and that he did not know the people who broke in. The tenant testified that his roommate was shot.

The tenant testified that he has a couch on his patio that he lets homeless people sleep on.

The tenant testified that the home invasion involving the machete had nothing to do with him and that as far as he knows the intruders were not looking for him. The tenant testified that he has never done anything to threaten anyone.

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.

An early end of tenancy is an expedited and unusual remedy under the *Act* and is only available to the landlord when the circumstances of the tenancy are such that it is unreasonable for a landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the *Act* for cause. At the dispute

resolution hearing, the landlord must provide convincing evidence that justifies not giving full notice.

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor 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 currently 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 circumstances.

In this case, the agent's testimony is in harmony with the complaints from other tenants in the subject rental building. The complaint letters and emails entered into evidence describe incidents and events involving drugs, violence and threats of violent which were reiterated in the agent's testimony. I find that the tenant's testimony is inconsistent with accounts of events provided by other tenants of the subject rental building and the agent. I find that a practical and informed person would readily recognize that the tenant's testimony is not reasonable in the current circumstances and is not supported by any evidence. I therefore accept the agent's version of facts over that of the tenant.

Based on the agent's testimony and the complaint letters entered into evidence I find, on a balance of probabilities, that the tenant is involved in some capacity with the drug trade. I find that the drug trade is dangerous, and the tenant has brought that danger to the subject rental property. I find that the tenant's involvement in the drug trade has attracted a criminal element to the subject rental property which has resulted in the violent incidents that occurred on September 2, 2021 and the machete home invasion. I find that the above violent incidents

- significantly interfered with and unreasonably disturbed other residents,
- seriously jeopardized the health and safety and lawful rights and interests of the landlord and other residents, and
- has put the landlord's property at significant risk.

I find that it would be unreasonable and unfair to the landlord and the other residents of the subject rental building to wait for a notice to end the tenancy under section 47 to

take effect because the residents of the subject rental property are at continued risk of violence from the tenant's associates. I find that as long as the tenant resides in the subject rental property the other residents of that property are at significant risk of being caught in the crossfire of violent acts associated with the tenant and his illicit dealings. I therefore award the landlord a Two-Day Order of Possession.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover \$100.00 from the tenant.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is entitled to retain \$100.00 from the tenant's security deposit.

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: October 15, 2021

Residential Tenancy Branch