



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING ADVISORY
ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on March 29, 2022. The Landlord applied for an order of possession pursuant to section 56 of the Residential Tenancy Act (the Act).

The Landlord was represented at the hearing by LH, an agent. Two witnesses attended the hearing for the Landlord. The Tenant attended the hearing and was represented by DK, his legal counsel. LH, AV, CF, and the Tenant each provided a solemn affirmation at the beginning of the hearing.

At the beginning of the hearing, DK raised an issue with respect to the presence of CF and AV during the hearing. However, as their evidence was essentially identical, I advised that I would be permitting these witnesses to remain in the telephone conference hearing throughout, pursuant to section 74(1) of the Act. DK did not raise the issue again during the hearing.

The Landlord testified the Notice of Dispute Resolution Proceeding package was served on the Tenant by attaching a copy to the Tenant's door on April 5, 2022. Service in this manner was witnessed by LH. A Proof of Service Notice of Expedited Hearing was submitted in support. The Tenant acknowledged receipt and issues regarding service or receipt were raised during the hearing. Pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

The Tenant did not submit documentary evidence in response to the Application.

All in attendance were advised that Rule of Procedure 6.11 prohibits the recording of dispute resolution proceedings.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue

Is the Landlord entitled to an order of possession?

Background and Evidence

The parties agreed the tenancy began on May 1, 2019, that rent of \$874.00 per month is due on the first day of each month, and that the Tenant paid a security deposit of \$431.00, which the Landlord holds. A copy of the tenancy agreement between the parties was submitted into evidence.

On behalf of the Landlord, LH testified that there have been “ongoing issues” between the Tenant and his neighbours for some time. This behaviour has included yelling and screaming, making threats toward CF, his son, AV’s dog, and other occupants of the rental property. LH testified that the parties reside in a family housing building and the Tenant’s behaviour has not been acceptable. LH testified that an incident on March 21, 2022, brought an ongoing feud between the Tenant and his neighbours to a head.

The evidence of LH was supported by a Concern or Complaint Form completed by CF. This document describes the incident that gave rise to the Landlord’s application. According to CF, he heard the Tenant “screaming and threatening to kill [AV’s] dog and yelling profanities.” CF stated that he ran from his rental unit into the hallway. He saw the Tenant “out of his apartment”. CF stated that he was screaming back at the Tenant. CF stated that, in the melee, the Tenant threatened to “kill me and my kids and called me a slew of swear words and said that I was a bully.” According to CF, the Tenant “took a swing at me and hit me in the face and my glasses fell to the ground.” CF stated the Tenant “eventually threatened to kill everyone on our floor.” CF stated this kind of behaviour has been going on for several years and that the Tenant has previously tried to run him over with his car, called AV “heinous names”, spat on him, and banged on his door.

CF's written account was supported by a Concern or Complaint Form and email completed by AV which provides a similar description of the incident.

On cross-examination by DK, LH testified that she has been employed by the Landlord since June 2019. Although she acknowledged it is possible that other complaints have been made in relation to AV's dog, she was unaware of any.

CF also provided oral testimony during the hearing. He testified that he lives in a rental unit on the same floor as the Tenant. He testified that their doors are approximately 10 feet apart. CF testified that he moved into his rental unit at about the same time as the Tenant moved into his. A disagreement soon arose between them over whether or not CF had a barbeque in his rental unit – which was denied by CF – and the dispute has never resolved.

CF described the incident on March 21, 2022, as “the biggest blow-up” between them. He testified that the Tenant was screaming profanities and threatened to kill him, his son, and AV's dog. CF testified that the threats made him angry, that he approached the Tenant's rental unit, and that the Tenant hit him with a shoehorn.

On cross-examination by DK, CF testified that he approached the Tenant's doorway when the incident happened but did not enter. The Tenant had threatened to kill his son and AV's dog, and he started yelling at the Tenant at that time. However, CF testified that the Tenant's screaming and threats began before he came out of his rental unit. CF also testified that the Tenant attempted to run over AV's dog and to spit on CF about a year after he moved into the rental unit.

AV also provided oral testimony during the hearing. She testified that she is best friends with CF and that they have dated on and off over the years. AV testified that issues between the Tenant and CF have been going on for almost three years. AV testified that the Tenant bangs on the door of CF's rental unit and on walls. AV testified that she has witnessed the Tenant spit on CF. She also accused the Tenant of calling her a “whore” and heard the Tenant threaten to kill CF and her dog.

On cross-examination by DK, AV testified that her dog has never bitten or attacked anyone. AV testified that she was in CF's rental unit on March 21, 2022 but acknowledged she didn't see whether or not her dog bit the Tenant as alleged. AV acknowledged that her dog was off leash at the time of the incident on March 21, 2022.

The Tenant provided oral testimony in response to the Landlord's allegations. The Tenant testified that he is almost 70 years old and uses a walker to get around. He has lived in the same community since he was six years old.

The Tenant testified that on March 21, 2022, he was leaving his rental unit when he saw a "young kid" and a dog coming down the hallway. The dog's leash was loose and was being dragged on the floor. The Tenant testified the dog ran right to him and bit his pant leg. This was the sixth time this occurred. The Tenant testified that he does not know CF or his son but that on the day of the incident, CF rant up to him and pushed him into his door. The Tenant acknowledged that he hit CF with a shoehorn to get him out of the Tenant's doorway.

The Tenant testified that ne never swears, is very polite, has manners, and did not use foul language during the incident. He testified that he never made any threats, is "very sincere", and goes by the rules. The Tenant also testified that he did not spit on CF, whereas CF "called me out" for a fight.

The Tenant testified that police attended the rental property and suggested that he install a camera. Otherwise, no action was taken by police.

At the conclusion of the hearing, DK submitted that an expedited hearing is not the appropriate forum for this dispute and that it would not be unreasonable for the Landlord to wait for a One Month Notice to End Tenancy for Cause to take effect. He submitted that there is obviously a discrepancy between the parties' stories and emphasized that AV's dog was off leash and that CF approached the Tenant's doorway as important considerations.

Analysis

Based on the documentary evidence and affirmed oral testimony, and on a balance of probabilities, I find:

Section 56 of the Act permits a landlord to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the Act. The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2) of the Act, which states:

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...

- (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.

In this case, I find it is more likely than not that the incident on March 21, 2022, and previous incidents, occurred as described by LH and the witnesses for the Landlord.

I find it is more likely than not that the Tenant was in his doorway or in the hallway when the incident on March 21, 2022, occurred. This vantage point would have given him the opportunity to observe CF's son and AV's dog approaching. In light of the Tenant's likely position in his doorway or in the hallway, I find it is unlikely that CF entered his rental unit as claimed by the Tenant.

I find it is more likely than not that CF was in his rental unit when the incident began. I find that the Tenant's screaming and threats that caused CF to enter the hallway and approach the Tenant. I find it is unlikely that CF's response was brought about by the Tenant's mild language and manners.

I find that even if MV's dog did grab the Tenant's pant leg as claimed, this did not provide justification for making threats to kill CF's son or AV's dog. Similarly, even if CF approached the Tenant during the incident, this did not provide the Tenant with justification to strike CF with a shoehorn.

Finally, notwithstanding the Tenant's age and physical limitations, I find that the Tenant's threats and shouting significantly interfered with or unreasonably disturbed CF and AV, and that striking CF with a shoehorn seriously jeopardized the health or safety or a lawful right or interest of CF.

In light of the Tenant's threats and his acknowledgment that he struck CF, I find it would be unreasonable or unfair to the Landlord to wait for a notice to end the tenancy under section 47 of the Act, contrary to the submissions of DK. The feud between the Tenant and CF shows no signs of de-escalating.

Considering the above, I find the Landlord has demonstrated an entitlement to an order of possession, which will be effective two days after service on the Tenant.

Conclusion

The Landlord is granted an order of possession, which will be effective two days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of 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: April 22, 2022

Residential Tenancy Branch