



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

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

1. An early end to the tenancy and an Order of Possession pursuant to Section 56 of the Act; and,
2. Recovery the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, her Agent, and witness attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. 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, her Agent and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord and her Agent testified that they were not recording this dispute resolution hearing.

The Landlord served the Notice of Dispute Resolution Proceeding package and evidence for this hearing on the Tenant by attaching a copy to the Tenant's door on January 13, 2023 (the "NoDRP package"). The Landlord uploaded a witnessed proof of service form #RTB-9 attesting to this service. I find that the Tenant was deemed served with the documents for this hearing on January 16, 2023, in accordance with Sections 89(2)(d) and 90(c) of the Act.

Issues to be Decided

1. Is the Landlord entitled to an early end to the tenancy and an Order of Possession?
2. Is the Landlord entitled to recovery the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord confirmed that this oral tenancy began on December 1, 2022. Monthly rent is \$1,500.00 payable on the first day of each month. A security deposit of \$1,500.00, representing first and last month's rent was collected at the start of the tenancy and is still held by the Landlord.

The Landlord has a fear for her safety, and the safety of her property because of the Tenant's aggressive behaviours and manners. On December 21, 2022, the Tenant came into the Landlord's home, gave her a drink and told her to drink it. The Landlord said the Tenant was forceful and aggressive. The Landlord took one sip from the offered drink. The Tenant told the Landlord that he is the man, she is not going anywhere, and she is spending Christmas with him. When he left that evening, the Landlord poured out the drink and called the downstairs tenant.

On December 22, 2022, the Landlord asked the downstairs tenant to bring her car to the end of the driveway, there had been a lot of snow, and she promptly left the residential property. The Tenant called the Landlord while she was driving, and the Landlord told the Tenant that she cannot talk. The Tenant asked her if she was away from the vicinity of the residential property, when she answered yes, he told her, "I was going to die, my car will crash, and I will die in a ditch." The Landlord hung up. The Tenant called her back and she hung up again.

While the Landlord was away, the Tenant sent many 'weird messages'. The Tenant has also left similar messages in the Landlord's shed and another person's van.

The Landlord has reason to believe that the Tenant has been in her home when she is not there. She knows he has been using her hot tub after she told him he was not permitted to use it anymore.

The Landlord testified that the Tenant has made inappropriate comments to her. One time he came to the Landlord's home and wanted a hug. The Landlord gave him a hug, but after that, the Tenant took it the wrong way. He told the Landlord that they are really connected, and he likes to date older women. He has also made sexual comments to the Landlord. He once told the Landlord that "the last time I had sex was with a fat woman too. She came on top of him." Giving this evidence was retraumatizing for the Landlord.

The Landlord made a report to the RCMP, and the Landlord provided the police file number. They have told her to make sure to always have her phone with her at all times. If he approaches her, she is to call 911. The RCMP did speak to the Tenant, and after that period the lewd comments stopped for a while. The downstairs tenant has been instrumental at stopping the Tenant from following the Landlord when she has left the residential property.

The Landlord shared that the Tenant told her he was going to "thrash her property". One day when she came home, the Tenant had gas containers lined up in front of his place. The Landlord determined that the water pump was turned off and her reserve water tank was drained. Neither her nor her downstairs tenant did these things.

The Landlord testified that the Tenant has tampered with her security system. She said he has asked her to turn off her security lights, or he has unilaterally done this himself.

The Landlord's witness who is her downstairs tenant is also bothered by the behaviour of the Tenant. The witness shared that he knows the Tenant has been in the Landlord's home when she is not there as he can hear footsteps above his living space when the Landlord is not home. The witness has also seen the Tenant coming out of the Landlord's home. The witness testified that he has seen the Tenant 10 or 15 times on the Landlord's deck and the Tenant just quickly walks away.

The witness testified that the Tenant has been turning lights off outside, or unplugging the Christmas lights, effectively leaving it pitch black outside. Every evening the witness makes sure that the lights are on, but in the evenings the witness has observed the Tenant on the Landlord's balcony, the security lights are off and the Christmas lights are

unplugged. The witness said he has not seen the Tenant turning off the lights, but he knows that he is not doing it and neither is the Landlord.

The witness shared that the Landlord has shown him approximately 50 threatening texts from the Tenant. He says things like, "I want you to die, you need to stay home, you can't go out, he sends her love letters." The witness said every time the Landlord gets these disturbing messages she is upset.

The witness also uploaded a statement where he relayed when the Landlord is not home, "I hear any activity within the fenced property at the residence and there are motion sensors with the lights. I noticed when activated." The witness said he realized that the Tenant was coming into the Landlord's residence to turn off the deck and porch lights, always when the Landlord was not there. The witness said he is concerned for his own safety while alone, and he has not been getting much sleep when the Landlord is away.

The witness confirmed there are occasions where he has stopped the Tenant from following the Landlord when she is leaving the residential property. He specifically remembers two times doing this for the Landlord's benefit. The witness said the Tenant has been telling people he is a drug dealer and recently, the Landlord is going away more often than usual.

The Landlord's Agent submits that the Landlord is a prisoner in her own home where she is unable to live, relax or survive while the Tenant remains on the property. The Landlord is entitled to quiet enjoyment of her residence, but she does not have this. The downstairs tenant's quiet enjoyment in his home is significantly interfered with since the Tenant moved in – he is harassed and physically bothered by the Tenant's presence.

The Landlord seeks an early end of tenancy and an Order of Possession.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus, in this application, is on the landlord to prove, on a balance of probabilities, the grounds on which this application for an early end to tenancy were based.

As this hearing was conducted pursuant to Rules of Procedure 7.3, in the Tenant's absence, all the Landlord's testimony is undisputed. The Tenant did not upload any evidence for this matter. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In this matter, Section 56 of the Act is relevant:

Application for order ending tenancy early

- 56** (1) *A landlord may make an application for dispute resolution requesting*
- (a) *an order 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) *an order granting the landlord possession 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.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

The Landlord testified about persistent and disturbing behaviours of the Tenant that have negatively impacted her life since he has come to the residential property. The Tenant has forcefully come into the Landlord's home and has made demands on her, and he has made sexual comments to her. The Landlord has turned to her downstairs tenant to act as interference for her to feel safe.

The downstairs tenant, the Landlord's witness, gave compelling evidence about how life has negatively changed since the Tenant has taken up residence on the residential property. He is harassed and is physically bothered by the Tenant's actions.

Based on the totality of the undisputed evidence of the Landlord and the witness, I find the Tenant has significantly interfered with or unreasonably disturbed another occupant and the Landlord of the residential property. I am satisfied that the Landlord has met her burden of proving on a balance of probabilities that the Tenant's tenancy must end early. Pursuant to Section 56(2)(b), I find it would be unreasonable, and unfair to the other occupant and the Landlord of the residential property to have to wait for a notice to end the tenancy under Section 47 of the Act to take effect.

I find the Landlord has satisfied me that an order to end this tenancy early is warranted and she is entitled to an Order of Possession, which will be effective two (2) days after service on the Tenant.

In addition, having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application, which I order may be deducted from the security deposit held pursuant to Section 72(2)(b) of the Act.

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of the Supreme Court of British Columbia.

The Landlord may deduct the \$100.00 application filing fee from the security deposit due to the Tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 26, 2023

Residential Tenancy Branch