



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET FFL

Introduction

This dispute relates to the landlords' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for the following:

1. Order to end the tenancy early for health or safety reasons, receive an order of possession,
2. \$100 filing fee.

The parties attended the teleconference hearing and gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. The hearing process was explained and an opportunity to ask questions was provided to the agent. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The tenant claims they were in hospital during the hearing, and that they had been in hospital for the past "4 to 5 days" according to the tenant, which I will address further in this decision.

The tenant's witness, TF, was heard from at the start of the hearing and was asked to step out of the room, which the tenant claims was a hospital room not shared with any other patients at the time of the hearing. The tenant claims they were speaking from their cell phone during the hearing.

The parties confirmed their respective e-mail addresses.

Issues to be Decided

- Is the landlord entitled to end the tenancy early and obtain an order of possession for health or safety reasons under section 56 of the Act?
- If yes, should the landlord get their filing fee back?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on May 1, 2020. Monthly rent is \$1,595 per month and due on the first day of each month.

The landlord testified that on March 27, 2023, after posting a notice to the tree next to the driveway of the tenant, that the tenant sped out of their driveway in a big truck and tried to hit the landlord who was in their car. The landlord stated that unless they moved the tenant in their truck would have killed her by “t-boning” into their car. The landlord stated that this incident was witnessed by JS, who was called to testify.

JS affirmed the following details:

- That they were there on that day (March 27, 2023) to witness JM post a notice to a tree and did not see anyone on the property at that time other than JM.
- That they left in their vehicle first only to have JM come up from behind them at a high rate of speeding honking and then passed them, resulting in JM being in front and the tenant being behind them in their big truck.
- That the tenant blocked JM in at the carwash and would not move resulting in JM going into the carwash for safety.

Under cross-examination, JS affirmed the following additional details:

- That they did not witness who pulled out of the driveway first.
- That they could not describe the bumpers on the truck.
- That they could not see the back window of the truck.

The witness was then excused.

The tenant claims it was the landlord who was the aggressor and was trying to run the tenant off the road. The tenant testified that they called the police. The tenant claims it was Cst. Richards they spoke to but was unable to provide a badge number or police file number in support of their testimony. The tenant confirmed that they were driving their truck that day on March 27, 2023.

The landlord stated they are 5 feet tall and 105 pounds and that the tenant is a large man who is 6 feet tall, was with the armed forces and is intimidating.

The tenant did not mention in their evidence submitted 2 days before the hearing that they were in the hospital. The tenant also did not mention anywhere in that evidence that the landlord was the aggressor on March 27, 2023.

The tenant was then asked to put the nurse on the phone so that I could confirm that the call was being made from the hospital with a witness being outside of the room. Almost immediately, a female voice answered which was the same voice as the tenant's girlfriend, TF. The female was affirmed was asked what the local phone number was on the unit, and the female could not answer the question and instead asked for the question to be repeated. Once the question was asked again, the female voice stated "124" and then was asked for a the full phone number and no response was given.

It was at this point at the hearing that the tenant was advised that I was not accepted their witness was outside the room nor that the tenant was in hospital or that a nurse had been on the phone. I find the voice was the same as TF and that I find neither the tenant nor TF to be credible as a result, and would not hear from TF further as a result.

The parties were advised that the tenancy will be ending, which I will set out in detail below.

Analysis

Based on the testimony provided during the hearing, the documentary evidence before me and on a balance of probabilities, I find and I am satisfied that the tenant drove their truck in such a method that they were trying to intimidate or hit the landlord's car. I afford significant weight to the witness testimony, JS, who confirmed that the landlord was fearful of the tenant and that the tenant drove their truck aggressively at the landlord's car blocking them in the carwash on March 27, 2023 and that the landlord entered the carwash to seek safety.

I afford no weight to the tenant or their girlfriend/witness (Girlfriend), as I find it was TF with the same voice as the "nurse". I find that the tenant and their Girlfriend are not credible.

I also find that the tenant's version of events do not sound reasonable as for the tenant's version to be true, I would have to be convinced that the landlord used their car to try to intimidate a much larger person in a much larger truck. I am not convinced of the tenant's version of events given my finding that the tenant is not credible.

Section 56 of the Act applies and states:

Application for order ending tenancy early

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.

(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.
[emphasis added]

I am also satisfied that it would be unreasonable and unfair to the landlord to wait for a notice to end tenancy under section 47 of the Act. I find the actions of the tenant using their truck to drive aggressively at the landlord to be completely unreasonable.

Therefore, pursuant to section 56 of the Act, I grant the landlord an order of possession for the rental unit effective not later than **two (2) days** after on the tenant. I find the tenancy ended the date of this hearing, April 18, 2023 pursuant to section 62(3) of the Act.

As the landlord's application is successful, I grant the landlord **\$100** for the recovery of the cost the filing fee under section 72 of the Act. The landlord is authorized to deduct \$100 from the security deposit as result.

Conclusion

The landlords' application is successful.

The tenancy ended this date, April 18, 2023.

The landlords are granted an order of possession effective two (2) days after service on the tenant.

This decision will be emailed to both parties. The order of possession will be emailed to the landlord for service on the tenant. This order may be enforced through the Supreme Court of British Columbia.

The landlord has been granted the \$100 filing fee and are authorized to deduct \$100 from the tenant's security deposit.

Should the tenant fail to vacate the rental unit they are cautioned that they can be held liable for all costs related to enforcement of the order of possession including, but not limited to, court costs and bailiff fees.

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*. Pursuant to section 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*.

Dated: April 18, 2023

Residential Tenancy Branch