



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding PACIFICA HOUSING ADVISORY
ASSOCIATION 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:

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's Agents, KS and LS, the Tenant, and her Articled Student attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

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

The Landlord testified that they served the Tenant with the Notice of Dispute Resolution Proceeding package and evidence on March 17, 2023 by Canada Post registered mail (the "NoDRP package"). The Landlord referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant confirmed receipt of the Landlord's NoDRP package. I find that the Tenant was deemed served with the NoDRP package five days after mailing them on March 22, 2023 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Tenant served her evidence by email on April 4, 2023. The Tenant provided an email stream in her documentary evidence showing that the Landlord consented to the delivery of evidence by email. The Landlord confirmed receipt of the Tenant's evidence in the hearing. I find that the Tenant's evidence was deemed served on the Landlord on April 7, 2023 pursuant to Sections 43(1) and 44 of the *Residential Tenancy Regulation*.

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 parties confirmed that this periodic tenancy began on September 30, 2014. Monthly rent is \$461.00 payable on the first day of each month. A security deposit of \$489.50 was collected at the start of the tenancy and is still held by the Landlord.

The Landlord testified that they received a number of reports about an incident occurring in February 2023. The Landlord stated that the Tenant was yelling racist remarks, she spat on a child, and she got into a verbal altercation with a neighbouring family. They stated there is a history of verbal issues, and disruption of the quiet enjoyment for other tenants by the Tenant in this matter.

The Landlord said they have issued a number of warning letters to the Tenant, and they have tried to talk and work with the Tenant. The Landlord stated that none of the problems have been resolved on the Tenant's side. The Landlord claimed that all the neighbours are afraid of the Tenant. The Landlord submits that this is the reason why it would be unreasonable, or unfair to the Landlord or other occupants of the residential property, to wait for a one month notice to end the tenancy to take effect.

The Landlord uploaded documentary evidence that sets out the circumstances of the February 2023 event from two tenants' perspectives. The Landlord also testified that the

Tenant was charged with assault in August 2021 stemming from an incident occurring in 2019.

The Tenant denies the accusations put forth by the Landlord, as she has been a victim of racism herself. The Tenant said neither of the Landlord's Agents witnessed the event in February 2023. The Tenant stated she did not swear at the female neighbour, although she said she does have issues with the woman. The Tenant testified that she did not swear, spit or yell at the neighbours' children. She had returned home from work, and while at her front door she noticed the male neighbour at his rental unit's door. She said to him, "why are you creeping my house out and listening to my house?" The Tenant testified that the male neighbour began screaming at her, and said he was going to throw a bin filled with glassware at her.

The Tenant's written statement said that the male neighbour picked up a bucket of glassware he had outside of his unit. She wrote that it looked like the male neighbour was going to throw the bucket of glassware on her from above. The Tenant said the male neighbour asked where her boyfriend was because he was going to beat the shit out of him. The Tenant stated some other tenants intervened and held him back. Eventually, one tenant got the male neighbour to go back into his home.

The Tenant's written statement continued saying approximately 10-15 minutes later the police came to her unit and took her statement. She told them that she wanted to talk to the crisis team, but the police did not put her in touch with the crisis team. The police then went to the neighbour's unit and took their statement. After that, the police came back to the Tenant's rental unit and told her that they needed to keep the peace with one another.

The Tenant reached out to the Landlord, and wanted to tell her side of the story. She was told that she has to write it out. The Tenant said she is not comfortable communicating in the written form. The Tenant stated she now has one child at home, he is a good young man, and these events have been a disturbance to her family.

The Articled Student submitted that the neighbouring family has now moved. She also noted that it is unfair for the Landlord to issue warning letters to the Tenant, then seek to rely on these warnings for an early end to the tenancy. The Landlord subsequently confirmed the neighbours moved very recently and said it in response to their stress and fear.

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 to prove their case is on the person making the claim.

RTB Rules of Procedure 7.4 states:

Evidence must be presented: Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered. (emphasis mine)

A Section 56 application is for very serious breaches only. RTB Policy Guideline #50-Expedited Hearings discuss the types of emergency matters that would be considered in this type of claim. Policy Guideline #50 states:

An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker. The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

Further, the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

Section 56 of the Act states:

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. (emphasis mine)*

The Landlord submits that the Tenant was witnessed yelling racist remarks at her neighbour, spitting on their children, and engaging in verbal altercations with the neighbour. The Landlord stated there is a history of this kind of behaviour. The Landlord uploaded documentary evidence that references the February incident, although did not specifically point to these pieces of evidence. Neither of these witnesses came to the hearing to speak to their letter or email.

The Landlord also seeks to rely on their documentary evidence that says the Tenant was charged with assault causing bodily harm on August 17, 2021. This information was relayed to the Landlord by another tenant who submitted a written concern or complaint dated January 10, 2023.

The Tenant denies the Landlord's account of the event on February 19, 2023. She notes the Landlord did not witness the incident. The Tenant does admit that she has issues with the wife of her neighbour, but she denies swearing, spitting or yelling at the neighbours' children. She has her own children, and she would not do that to children. The Tenant's uploaded statement sets out a credible recitation of the February 19, 2023 event.

The Tenant testified that she had a heated exchange with the male neighbour on that day, and although the exchange began with a comment from the Tenant, it appears that the male neighbour was not an innocent victim. That neighbouring family has since relocated. The Landlord's office was not receptive to taking an oral statement from the Tenant.

A Section 56 application is for emergency matters. It seems that the Tenant and her previous neighbour were not on good terms, and a heated exchange occurred on February 19, 2023. The Tenant has attempted to make contact with the Landlord, but has been denied access to tell her story. I find I am not satisfied that the Tenant did something so egregious that I would grant an early end of tenancy and an Order of Possession to the Landlord. The Landlord has not proven on a balance of probabilities that the Tenant has seriously breached the Act. I dismiss the Landlord's application.

As the Landlord was unsuccessful in their claim, they must bear the cost of the application filing fee.

Conclusion

The Landlord's application is dismissed. The tenancy will continue until ended in accordance with the Act.

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: April 12, 2023

Residential Tenancy Branch