

DECISION

Dispute Codes ET

Introduction

This hearing was convened by way of conference call on this date to deal with the landlord's application for an order ending the tenancy early pursuant to Section 56 of the *Residential Tenancy Act*, and to obtain an Order of Possession.

Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents on June 28, 2010 by posting same to the door of the rental unit, the respondent did not attend the hearing.

Issues(s) to be Decided

Is the landlord entitled to an early end of the tenancy, and obtaining an Order of Possession?

Background and Evidence

This fixed term tenancy began on November 1, 2009 and has an expiry date of October 30, 2010. Rent in the amount of \$1,200.00 is payable in advance on the 1st day of each month, and the arrears in rent are now \$1,200.00 for the month of July, 2010. On October 4, 2009, the landlord collected a security deposit from the tenant in the amount of \$550.00.

The landlord testified that on June 28, 2010 he served a 1 Month Notice to End Tenancy for Cause on the tenants personally, which had an expected vacancy date of July 31, 2010. A copy of that notice was not provided in advance of the hearing, however the landlord testified that the reasons quoted on the notice for ending the tenancy are that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, and has seriously jeopardized the health or safety or lawful right of another occupant or

the landlord, and that the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord also testified that the tenants have been leaving garbage behind in the yard and common areas of the rental property, and has provided numerous photographs to support that claim. The photographs contain outside areas of the rental unit with used diapers and other similar debris, which the landlord has testified is the yard of this rental unit and the garbage belongs to this tenant. He stated that the unit is a basement suite with another suite above it. He is unable to rent the other suite due to the unclean condition of the yard, being the common area for both units, and due to the odour of the debris and the basement suite. He stated that 2 perspective tenants told him that they could not rent the upper unit due to the condition of the lower unit and yard. One of those perspective tenants gave a security deposit on June 10, 2010 which he had to return when they didn't move in. He further testified that the upstairs unit is still vacant.

The landlord also testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served on the tenant in April, 2010, after which the tenant called the landlord at his place of employment and threatened to assault him. He stated the tenant is very confrontational even when the landlord attends to collect rent.

The landlord also testified that his neighbours told him this morning that the tenants had spray painted graffiti on the fence of the rental unit. Further, the garbage collectors left stickers on the garbage which stated that they would not collect garbage from this unit because it was not appropriately bagged and was unsanitary or unsafe for garbage collectors.

Analysis

I accept the evidence of the landlord that the tenant was served pursuant to Section 89 (2) of the *Residential Tenancy Act* on June 28, 2010 by posting the Landlord's

Application for Dispute Resolution and notice of hearing documents to the door of the rental unit, which were deemed received by the tenant 3 days after posting.

The *Residential Tenancy Act* permits a landlord to issue a notice to end tenancy if certain circumstances exist, and Section 56 of the *Act* permits the landlord to make an application for dispute resolution to request an order ending the tenancy on a date that is earlier than the tenancy would end if notice were given to the tenant for cause under Section 47. However, the *Act* also states that an order of possession in respect of the rental unit can only be made under Section 56 if one of those circumstances applies and 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 to take effect. That is the application before me, which has not been disputed by the tenant.

Looking at the photographs provided by the landlord in advance of the hearing, and hearing the evidence of the landlord taken under oath, I find that the tenant is in breach of Section 32 (2) of the *Act* which states as follows:

32 (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Further, I find that the landlord has established that it would be unfair or unreasonable to the landlord to wait for the notice to end tenancy that was issued on June 28, 2010 to take effect. I find that the landlord has been unable to rent the other unit due to the lack of attention and maintenance that I find are the result of the tenant's actions.

Conclusion

Based on the above facts I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to

comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: July 19, 2010.

Dispute Resolution Officer