



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ET, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an early end of the tenancy and an Order of possession and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

The landlord testified that the female tenant was served with Notice of this hearing via a process server who signed a statement that the hearing documents were posted to the tenant's door on February 29, 2012, at 11:35 a.m. Therefore, I find that the female tenant was served with Notice of the hearing as provided by section 89(2)(d) of the Act.

The male tenant was served with Notice of the hearing in the same manner at the same time.

Issue(s) to be Decided

Is the landlord entitled to end this tenancy early without the requirement of a Notice to End Tenancy?

Is the landlord entitled to an Order of possession?

Is the landlord entitled to filing fee costs?

Background and Evidence

This tenancy commenced on May 1, 2000, rent is currently \$1,650.00 due on the first day of each month.

There is no dispute that the police attended this rural rental property on January 31, 2012, to execute a search warrant based on a sworn information that a suspected marijuana grow operation was on the property. A copy of the Warrant to Search issued on January 30, 2012, was supplied as evidence. The warrant was issued based on the reasonable belief that the marijuana and equipment used in the production of marijuana would be located on the property. The tenants have each been given a Promise to Appear in Court on June 7, 2012, in relation to the investigation carried out by the police.

The landlord did not become aware of the existence of a marijuana grow operation on the property until the female tenant sent the landlord a February 15, 2012, email informing the landlord that they had a small grow-op in a trailer on the property and that BC Hydro had terminated service to the property.

The landlord submitted that the tenant has engaged in an illegal activity that has jeopardized the landlord's lawful rights and placed the property at significant risk and that waiting for a Notice ending tenancy to take effect would be unreasonable.

The landlord submitted the tenants have completed electrical work on the property, as the result of having tampered with the service to power the grow-op. The landlord did not approve any electrical work, but did locate a permit that was issued by the BC Safety Authority for "repair of service – grow-op diversion." A copy of the permit was supplied as evidence.

The landlord submitted evidence from their insurance company indicating that if the tenant has been charged with the offence in question and remains on the property beyond April 29, 2012, renewal of the policy would pose a problem and that insurance from a specialty market would need to be investigated.

The landlord stated that if a claim were to arise while the tenant was on the property, such as a fire, it is likely any insurance claim would be denied. A February 23, 2012, email from the insurer indicated that there would not be any insurance coverage to the building for any damage caused directly or indirectly as the result of illegal activities. The insurer strongly recommended eviction of the tenants, as in any event of arson, while the insurance company would respond, potential difficulties could also arise.

The landlord cited *British Columbia (Director of Civil Forfeiture) v. Rai*. This decision was issued by The Honourable Mr. Justice Silverman in 2011. The landlord stated that this decision points to the potential risk imposed on the landlord's lawful right in relation to the property, as the tenant appears to have engaged in unlawful activity and during

that time has paid rent to the landlord. Paragraph 49 of the decision was of particular concern to the landlord; as payment of rent to the landlord potentially places the landlord at risk of accepting rent as proceeds of crime. Further, the landlord is fearful they could lose their property as result of the illegal activity, even if the tenant is not convicted.

The landlord wishes to immediately obtain an order of possession, in order to protect the landlord from possible action under the civil forfeiture legislation and to ensure that insurance on the property is maintained. The landlord has requested an early end to the tenancy as the risk of a fire or other loss could leave the landlord without insurance coverage or a situation where the insurance company declines coverage due to the grow-op that was allegedly operated by the tenant.

The tenant responded that the home has not been damaged, that the alleged grow-op was in a trailer that he owns and that the electrical system is ready and repaired. The tenant stated that the risk of civil forfeiture is just hearsay and it will not occur. The tenant stated he is planning to vacate the property by April 1, 2012.

Analysis

In order to establish grounds to end the tenancy early, the landlord must not only establish that they have cause to end the tenancy, but that it would be unreasonable or unfair to require the landlord to wait for a notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the submission of the landlord's agent, I find that the landlord has met that burden.

In relation to sufficient cause, I find that the risk of loss of insurance coverage, as a result of the presence of the tenant on the property places the landlord's lawful right in jeopardy. Due to the actions of the tenants, the landlord now faces the possibility of a failure of the insurance policy; a matter that I agree places the landlord's lawful right in jeopardy.

Further, I find that the landlord has every reason to end this tenancy as quickly as possible, so as to avoid any confusion in relation to the landlord's concern regarding the possibility of civil forfeiture. The landlord did not provide any evidence that civil forfeiture is imminent or that any steps have been taken by the authorities in relation to forfeiture; but the possibility cannot be ignored by the landlord.

Secondly, in the circumstances it would be unreasonable and unfair to require the landlord to wait for a notice to end the tenancy under s. 47, therefore; I find that the landlord is entitled to an order for possession. A 1 Month Notice ending tenancy for Cause issued in February would not be effective until March 31, 2012; a delay I find unreasonable given the threat to the insurability of the property and the alleged criminal activity that has occurred on the property.

An Order of possession has been issued and may be filed in the Supreme Court and enforced as an order of that Court.

As the landlord's Application has merit I find that the landlord is entitled to the sum of \$50.00 being the cost of the filing fee paid, pursuant to section 72 of the Act.

Conclusion

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenants**. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution and I grant the landlord a monetary Order in that amount. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court 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: March 15, 2012.

Residential Tenancy Branch