



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

FF, ET

Introduction

This hearing was convened to deal with an application from the landlord seeking an Order of Possession. The landlord requested that the tenancy be ended without Notice pursuant to section 56 of the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

- Is the landlord entitled to end the tenancy without Notice and obtain an Order of possession pursuant to section 56 of the Act?

Background and Evidence

The landlord testified that the tenancy began in December 2012 and has been a problem since that time. The rent is \$800.00 per month and a security deposit of \$400.00 was paid.

The landlord testified that the tenant's conduct has led them to seek a termination of the tenancy without Notice. According to the landlord, the tenant removed a fireplace in the rental unit that was a fixture included in the tenancy and the tenant then sold it to a local pawn shop. The landlord filed a police report with respect to this incident.

The landlord also testified that the tenant has been doing what appear to be suspicious business transactions that involve frequent unfamiliar visitors coming and going at all hours. The landlord testified that neighbours have complained about this kind of activity

as well as numerous thefts. The landlord testified that there have been complaints from residents about strangers approaching them or appearing at their doors trying to locate the tenant's apartment.

Submitted into evidence by the landlord, in support the application, was a copy of the One-Month Notice to End Tenancy, photos, copies of documents related to the purchase of the fireplace and written communications.

The tenant acknowledged that she had removed the fireplace and sold it to the pawn shop. The tenant explained that the business transactions that have been witnessed were related to her activities in assisting her uncle with an enterprise that involved purchasing and refurbishing used telephones.

The tenant acknowledged receiving a One Month Notice to End Tenancy for Cause on September 8, 2013 and confirmed that she had not filed to dispute this Notice.

Analysis

With respect to the landlord's application seeking an immediate end to the tenancy, I find that the landlord had the burden of proof to show that the tenancy should end immediately, based on the tenant unreasonably disturbing other occupants, or seriously jeopardizing the health, safety or lawful right or interest of the landlord and others. The landlord would then be required to offer proof to satisfy the second part of the test by showing that it would be unreasonable or unfair to wait for a one month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect.

Section 56 of the *Act* provides a remedy that is reserved for situations in which there is a serious measure of urgency, such as a genuine threat of imminent harm or significant liability risk that would warrant immediate termination of the tenancy without any notice first being served. I find that this situation does not meet the criteria to grant an order for the immediate termination of the tenancy under section 56 of the *Act*. Therefore I find that the landlord's application to end the tenancy without Notice must be dismissed.

However, under section 47 of the *Act*, a landlord may terminate the agreement by giving notice to end the tenancy for unreasonably disturbing or significantly interfering with other residents or the landlord and I find that this Notice was served on the tenant.

Regardless of whether or not the merit of the One-Month Notice to End Tenancy for Cause is found sufficient to support a termination of the tenancy, the fact is that this tenant had failed to dispute the Notice by making her own application within the statutory 10-day deadline to do so. If a tenant who has received a notice under section 47 fails to make an application for dispute resolution to dispute the Notice, the *Act* states that the tenant:

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

I find that, because the Notice was not disputed by the tenant, I must grant the landlord an Order of Possession based on this Notice.

In any case, I find that the tenant's testimony confirming that she had removed and sold a fireplace belonging to the landlord would suffice to support the landlord's One Month Notice to End Tenancy for Cause.

For the reasons stated above, I hereby issue an order of possession in favour of the landlord effective October 31, 2013. 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.

Conclusion

The landlord is successful in the application and is issued an Order of Possession against 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 *Residential Tenancy Act*.

Dated: September 30, 2013

Residential Tenancy Branch

