



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: ET, FF

Introduction:

This is the Landlord's application for an early end to the tenancy and an Order of Possession; and to recover the cost of the filing fee from the Tenant.

Both parties signed into the teleconference and gave affirmed testimony at the Hearing.

The Landlord testified that he served the Tenant with the Notice of Hearing and copies of his documentary evidence by posting the documents to the Tenant's door on January 28, 2014. The Tenant stated that he received the documents on January 31, 2014.

Preliminary Matter – Tenant's Request for an Adjournment

Submissions

At the outset of the Hearing, the Tenant requested an adjournment. He stated that he has spoken to a lawyer, although he has not yet retained him, and that his lawyer told him to ask for a "two day adjournment" in order to properly prepare for the Hearing. The Tenant stated that he had a licence to administer nitrous oxide and that the nitrous oxide containers were empty and therefore not dangerous.

The Landlord objected to an adjournment. He stated that the Tenant had put the rental unit at great risk and that the rental property and the safety of its occupants were in danger.

Analysis and Finding

This is an application for an early end to tenancy under the provisions of Section 56 of the Act. These applications are made only in the most serious situations where 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 Tenancy for Cause to take effect.

The Tenant did not provide a copy of his license to administer nitrous oxide to the Landlord or to the Residential Tenancy Branch. The Tenant's lawyer did not sign into the teleconference, or provide written submissions to the Branch or the Landlord. The Tenant testified that he has not yet retained a lawyer.

I find that it would be highly prejudicial to the Landlord to adjourn the matter. Therefore, I declined to adjourn the Hearing and the matter proceeded.

Issue to be Determined:

Should the Landlord be provided with an Order of Possession pursuant to the provisions of Section 56 of the Act?

Background and Evidence:

The rental unit is in a rental property consisting of four suites. The Landlord lives in one of the suites.

The Landlord gave the following testimony:

The Landlord testified that the Tenant stored hazardous materials and potentially very dangerous pressurized vessels (nitrous oxide) at the rental unit. He stated that on January 20, 2014, two RCMP officers attended the rental property to speak to the Tenant, but he was not home. The officers asked the Landlord to relay a message to the Tenant, asking him to contact them. The Landlord gave the Tenant this message by leaving a message on his answering machine.

The Landlord testified that on January 21, two municipal police officers came to the rental unit looking for the Tenant.

On January 22, 2014, the RCMP returned to the rental unit but the Tenant did not come to the door. The RCMP towed and impounded the Tenant's car.

On January 23, 2014, the Landlord discovered nitrous oxide tanks in a common storage area of the rental property. He photographed the tanks and gave the photographs to the RCMP. On January 24, 2014, the RCMP and the ERT team came to the rental property and seized the tanks. He stated that the ERT team was at the rental property for 3 hours. The Landlord testified that the Tenant is currently under police investigation for possession of the tanks.

The Landlord provided copies of photographs of tanks that were in the shed, along with photographs of tanks that were located inside the rental unit.

The Landlord also provided a “material safety data sheet” in evidence, describing nitrous oxide as “classified hazardous under the WHMIS Controlled Product Regulation in Canada” and describing how to safely store and handle nitrous oxide gas.

The Tenant gave the following testimony:

The Tenant testified that the tanks were empty and not hazardous. He stated that the data sheet that the Landlord provided in evidence referred to the storage and handling of tanks that contained nitrous oxide.

The Tenant testified that he was keeping them until he had enough empty tanks to take to the dump. The Tenant testified that he is a paramedic with a licence to handle and administer nitrous oxide. He stated that he worked for an ambulance service whose head office was up north. He stated that it was cheaper for the ambulance service to have employees take empty tanks home and dispose of them than for the ambulance service to dispose of them. The Tenant stated that some of the tanks belonged to a friend who also had a license to handle and administer nitrous oxide.

Analysis:

In making an application for an early end to this tenancy the Landlord has the burden of proving, on the balance of probability, that there is cause for ending the tenancy early, such as unreasonably disturbing other occupants; seriously jeopardizing the health and safety or lawful right or interest of the landlord or another occupant; and placing the landlord’s property at significant risk. The Landlord must also satisfy me that it would be unreasonable or unfair to the Landlord or other occupants to wait for a one month Notice to End Tenancy for cause under Section 47 of the Act to take effect.

The Tenant acknowledges that he stored nitrous oxide tanks at the rental unit. He stated that they were empty and therefore not dangerous, but the Tenant provided no evidence that “empty” tanks were not dangerous.

I find it unlikely that the police would confiscate the tanks if they were not dangerous, or if the Tenant proved to the police that he was licensed to have the tanks in his possession.

Based on the affirmed testimony and documentary evidence of the Landlord, I am satisfied that the Landlord has proven that the Tenant has seriously jeopardized the health and safety or lawful right or interest of the Landlord or another occupant; and placed the Landlord’s property at significant risk and that it would be unreasonable or unfair to the Landlord and the other occupants of the rental property to wait for a one month Notice to End Tenancy for cause to take effect.

The Landlord's Application had merit and I find that he is entitled to recover the cost of the filing fee from the Tenant.

Pursuant to the provisions of Section 72 of the Act, the Landlord may deduct the \$50.00 filing fee from the security deposit.

Conclusion:

I hereby provide the Landlord with an Order of Possession **effective two days from service of the Order upon the Tenant**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to the provisions of Section 72 of the Act, the Landlord may deduct the \$50.00 filing fee from the security deposit.

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: February 06, 2014

Residential Tenancy Branch

