



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hermita Villa Holdings
and [tenant name suppressed to protect privacy]

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 requested an early end of the tenancy, 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, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The landlord posted the hearing package to the tenant's door on March 17, 2014; the day the landlord applied for dispute resolution. The tenant has been in the hospital and did not receive the hearing package until March 26, 2014; it was delivered to the tenant's social worker at the hospital.

A document that is posted to the door is deemed served on the 3rd day after posting. Therefore, I find the hearing package would be deemed served effective March 20, 2014. Further, it was confirmed that by March 26, 2014 the tenant was given the hearing package.

On March 19, 2014 the landlord made an evidence submission to the Residential Tenancy Branch. The landlord was not sure how this evidence was given to the tenant; he then called the owner of the property and proceeded to ask the owner if he had served the evidence. At this point I interjected and asked that the owner call into the hearing so he could be affirmed and provide testimony in relation to service of any evidence. The owner declined to do so as he was in a meeting; therefore, in the

absence of confirmation of service, the landlord's evidence was set aside. The landlord's agents were able to provide oral testimony.

At the start of the hearing a full description of the early end of tenancy was explained to the parties. Burden of proof and how a notice ending tenancy differs from a request for an early end to a tenancy were explained to the parties at the start of the hearing.

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

The tenant has lived in the unit for several years. The rental unit is one of twenty in a building that has commercial space below. The tenant's unit is above a show suite for a condo development. The landlord said that previously the tenant has not caused any problems and has been a good tenant.

On March 16, 2014 the owner of the property called the agent as the commercial tenant had reported water was entering from the ceiling. The agent immediately went to the property to investigate. He could not locate a source of the water from outside the building, so he went to the tenant's door, as the tenant lives directly above the commercial space.

When the agent went to the tenant's door the tenant appeared to be very agitated; he was asked if water was leaking in his unit, but the tenant could not respond. After repeating the questions, the landlord asked if he could enter the unit. The tenant allowed the agent entry.

When the agent entered the unit he found that it had been severely damaged. Both sliding glass doors leading out to a balcony had been smashed. The windows in the bedroom were both broken, the toilet was smashed and water had leaked onto the floor, into other portions of the unit, soaking the carpets. The landlord turned the water off and then asked the tenant if he could start to mop up the water, but the tenant did not respond. The landlord then went to his unit to retrieve a mop and he cleaned up the water.

The tenant told the landlord he had party and that it got out of hand. The landlord said the tenant was also rambling and did not appear to be in his right mind.

The landlord observed glass all over the floors, that the tenant had made holes in the walls, electrical wires were ripped out of outlets, the intercom system was pulled out of the wall, there were holes in the bedroom and front room walls, holes punched in the top of the thermostat, cable and light covers were removed and broken and a hole was made in the wall above the entry light switch.

Several hours later another occupant of the building contacted the landlord to report he could hear the tenant making threats. At around the same time the landlord's other agent arrived at the front of the building and was warned not to go down the alley; the tenant's unit faced the alley and he was throwing glass from the balcony. The tenant had also thrown his television from the balcony.

The agent called the police who attended and took the tenant to hospital; where he remains. The police then called the landlord to tell him that the unit was left unlocked; they reported that there was significant damage to the unit. The landlord provided the name of the police officer and a police file number.

The tenant responded briefly; he did not recall what occurred, only being taken from his unit. The tenant expressed a desire to remain in the rental unit. The tenant's assistant said they were acknowledging the rental unit had been damaged.

Discussion occurred in relation to enforcement of an Order of possession and the Regulation which sets out the handling of personal property. The landlord was given the social worker's contact information.

Analysis

In order to establish grounds to end the tenancy early, the landlord must not only establish that he has 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.

Application for order ending tenancy early

- 56** (1) *A landlord may make an application for dispute resolution to request an order*
- (a) 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) granting the landlord an order of possession in respect 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*
(Emphasis added)

Having reviewed the testimony of the 2 agents for the landlord I find that the tenant has caused extraordinary damage to the residential property. From the testimony I find, on the balance of probabilities, that the unit has essentially been rendered unfit for habitation until the landlord is able to gain access and make multiple repairs.

I found the landlord's agents' testimony consistent, reliable and free from any malice. It was apparent that the damage caused was out of character for the tenant; however, the level of damage that occurred is serious and extensive.

The tenant did not dispute the details of damage set out by the landlord; however, the tenant also had difficulty recalling the events that occurred on March 16, 2014. The damage was acknowledged by the tenant's assistant. The legislation does not contemplate individual circumstances; the decision to uphold a request for an early end to a tenancy is based on the grounds set out in section 56 of the Act.

Secondly, in the circumstances I find it would be unreasonable and unfair to require the landlord to wait for a notice to end the tenancy under s. 47. The level of damage described will require extensive rehabilitation of the unit; even if the tenant were able to return; the unit is not currently habitable as a result of the actions of the tenant and/or his guests.

Therefore I find that the landlord is entitled to an Order of possession.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, 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.

Based on these determinations I grant the landlord a monetary Order in the sum of \$50.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

Conclusion

The landlord is entitled to an Order of possession and filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 31, 2014

Residential Tenancy Branch

