



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMBASSADOR INDUSTRIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on April 24, 2015 seeking to end this tenancy early and obtain an Order of Possession (hereinafter referred to as an ET) and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each party gave affirmed testimony and confirmed receipt of evidence served by each other.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the testimony and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord met the high statutory requirement of proof for an ET?

Background and Evidence

The Landlord submitted evidence that the Tenant, S.P., entered into a written fixed term tenancy agreement that began on August 1, 2014 and is set to switch to a month to month tenancy after July 31, 2015. Rent of \$820.00 is due on or before the first of each month and on July 24, 2014 the Tenant paid \$410.00 as the security deposit.

The Landlord testified that the Tenant has allowed another person, M.R.S., to move into the rental unit. The Landlord stated that M.R.S. is named as a respondent to this

dispute because he has been known to be occupying the rental unit. The Landlord argued that M.R.S. is not a tenant because the Landlord has not added him to the tenancy agreement. Rent has been paid each month by cash payments left in an envelope marked with the unit number and placed in the rent drop box located at the Landlord's office in the rental building.

The Landlord asserted that there have been numerous noise complaints about this rental unit and an incident of a previous flood which occurred near the beginning of April 2015. She stated that they were told that the flood was caused by the Tenant or occupant when they stuffed a shoe and other items down the toilet. She decided to inspect the rental unit and posted a notice of entry for April 22, 2015. The Landlord stated that during her inspection on April 22, 2015 she saw three lights which had been pulled and broken leaving exposed electrical wires hanging down. She indicated that these bare wires and the lamps were leaning up against the Tenant's drapes, posing a fire hazard. When she asked the occupant to remove the lights he refused.

The Landlord submitted that the photographs provided in her evidence were taken during the inspection on April 22, 2015. She testified that the occupant M.R.S. was present during the inspection and he signed a hand written document acknowledging that the Landlord had told him he was being evicted as well as acknowledging the damage to the rental unit. The Landlord stated that she returned that same day, April 22, 2015, at 5:00 p.m. and posted the 1 Month Notice to End Tenancy to the Tenant's door and hand delivered a second copy to the occupant.

The next day, April 23, 2015, the Landlord was notified of a flood which was caused by the Tenant or occupant. She pointed to his documentary evidence which included a plumbing receipt dated April 23, 2015 which states:

[unit #] basin faucet was left on + a towel was in the basin sink drain. causing suite to be flooded as well as hallway (common area) + suite next door.

The Landlord argued that the flood was an act of retaliation for evicting the Tenant. The Landlord asserted that the next day, April 24, 2015, the occupant was seen outside walking between the two rental buildings and was yelling causing a disturbance. She said she asked him to return to the rental unit and to turn down the music coming from the unit. She said when she turned her gaze towards the rental unit she saw that the glass in the patio doors had been completely smashed.

The Landlord asserted that there has been over \$10,000.00 in damage to this rental unit and each time they take action to evict the Tenant or call the police more damage is caused. The Landlord stated that the occupant is highly agitated, aggressive, and loud, and she finds dealing with him to be very scary. As a result they are seeking possession of the unit as soon as possible.

The Landlord has submitted additional documentary evidence to support their application and the issuance of the 1 Month Notice which included, among other things,

copies of: a warning letter issued to the Tenant on April 20, 2015 and April 22, 2015; the tenancy agreement; photographs of the damaged rental unit; the Landlord's written submission; and a witness statement.

Analysis

An occupant is defined in the *Residential Tenancy Policy Guideline Manual*, section 13 as follows: where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a tenancy agreement to include the new occupant as a tenant.

Based upon the aforementioned, and in absence of a written tenancy agreement naming M.R.S. as a tenant, I find the second respondent to this dispute, M.R.S., to be an occupant. Thus, there is not a tenancy agreement in place between the Landlord and M.R.S. to which the *Residential Tenancy Act* applies. Accordingly, this application was amended to name only the Tenant, S.P. as respondent, pursuant to section 64(3)(c) of the Act.

Section 56 of the *Act* allows a tenancy to be ended early without waiting for the effective date of a one month Notice to End Tenancy if there is evidence that the tenants have breached their obligations under the tenancy agreement or *Act* and it would be unreasonable or unfair to wait for the effective date of a one month Notice to End Tenancy.

Section 32 of the *Act* stipulates that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant [my emphasis added].

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find that the Tenant, or someone permitted in the rental unit by the Tenant, has caused significant damage to the rental unit, the common area and a neighbouring rental unit. In addition, there is evidence that additional damage has been caused in retaliation to the issuance of the 1 Month Notice to end tenancy for cause, and additional damage to the patio doors, after the plumber had attended on April 23, 2015.

Next, I have considered whether it would be unreasonable or unfair to the Landlord to wait for a one month Notice to End Tenancy to take effect. After consideration of the serious nature of these incidents, and the fact that damage is being caused in retaliation to the issuance of the 1 Month Notice, and afterwards, I find it would be unreasonable to wait for a 1 month Notice to End Tenancy to take effect; as this tenancy relationship has already escalated to the point of the rental unit being significantly damaged.

Furthermore, I have considered that given the pattern of retaliation, there is significant risk of harm to the building or other tenants being caused in retaliation to the service of

the Order of Possession. Therefore, I grant the Landlord's application to end this tenancy early and issue an Order of Possession effective immediately upon service.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

Conclusion

The Landlord has been granted an Order of Possession effective **Immediately upon service to the Tenant or to the occupant who is an adult who appears to be residing in the rental unit.** The Landlord may also choose to serve the Order of Possession by posting it to the rental unit door. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord may withhold the **\$50.00** filing fee from the Tenant's security deposit as full satisfaction of this onetime award.

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: May 11, 2015

Residential Tenancy Branch

