



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 10:45 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 10:30 a.m. The female landlord (the landlord) and her agent attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord's agent (the agent) testified that he posted a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on the tenant's door on April 9, 2015. The agent testified that he sent the tenant a copy of the landlords' dispute resolution hearing package to the tenant by registered mail on April 17, 2015. He provided a copy of the Canada Post Tracking Number to confirm this registered mailing. He said that this package has not been returned by Canada Post. The agent also testified that he posted a copy of the hearing package on the tenant's door on April 17, 2015. Based on the agent's sworn testimony and in accordance with sections 89(2) and 90 of the *Act*, I find that the tenant was deemed served with the landlords' dispute resolution hearing package on April 20, 2015, the third day after its posting on the tenant's door.

At the commencement of this hearing, the landlord's agent withdrew the landlords' application for the recovery of the filing fee. This portion of the landlords' application is withdrawn.

Issues(s) to be Decided

Are the landlords entitled to an early end to this tenancy and an Order of Possession?

Background and Evidence

This periodic tenancy commenced on February 1, 2015. The tenant lives downstairs from the landlord. Monthly rent is set at \$550.00, payable on the first of each month. The landlord continues to hold the tenant's \$275.00 security deposit.

The landlord and her agent provided written evidence and sworn testimony that the tenant was arrested and charged with three criminal charges of uttering threats to cause death or bodily harm, contrary to section 264.1(1)(a) of the *Criminal Code of Canada* (the *Code*) on April 7, 2015. The agent testified that when a police officer came to arrest the tenant on April 7, 2015, the tenant assaulted the police officer, leading to a further criminal charge of assaulting a peace officer pursuant to section 270(1) of the *Code*.

The landlord testified that the tenant has not returned to the rental unit since her arrest on April 7, 2015. She said that the tenant's last rental payment was made for April 2015. The agent testified that there are a number of no-contact orders in place against the tenant, including one that she have no contact with the landlord. These orders resulted from the April 7, 2015 incident and criminal charges.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause. In this case, any application to obtain an Order of Possession on the basis of the 1 Month Notice could not take effect until May 31, 2015, the corrected effective date for that Notice.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*

- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

it would be unreasonable, or unfair to the landlord, the tenant 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.

Based on the undisputed sworn testimony and written evidence of the landlord and her agent, I find that the incidents of April 7, 2015, which led to the laying of four criminal charges against the tenant, justified the landlords' application to end this tenancy early without waiting for the 1 Month Notice to take effect. The landlord and her agent have identified serious concerns relating to the landlord's safety should the tenancy be allowed to continue. Under these circumstances, I find that it would be unreasonable and unfair to the landlord who lives upstairs from the tenant to wait for the 1 Month Notice to take effect. I grant the landlords' application for an early end to this tenancy and issue a 2-day Order of Possession.

Conclusion

I allow the landlords' application to end this tenancy early and grant the landlords a 2-day Order of Possession. I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 05, 2015

Residential Tenancy Branch

