



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wingold Construction Ltd. and Turner Meakin Management Company Ltd.
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 tenants for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that copies of the Application for Dispute Resolution, Notice of Hearing and evidence were sent to each tenant on July 3, 2015; the date the application was made. Service was completed by registered mail sent to the rental unit address. A receipt and tracking number for each tenant was supplied as evidence.

On July 22, 2015 the landlord checked the Canada Post tracking site and saw that the tenants had not claimed the registered mail. On July 22, 2015 the landlord posted copies of the hearing packages, for each tenant, to the tenants' door.

A refusal to claim registered mail does not allow a party to avoid service of documents. Therefore, I find that these documents are deemed to have been served effective July 8, 2015 in accordance with section 89 and 90 of the Act.

Further, I find that the tenants were again served effective July 25, 2015, three days after the hearing packages were posted to the rental unit door.

Neither tenant attended 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?

Background and Evidence

The landlord assumed management of the rental unit in December 2014. No tenancy documents were transferred to the agent. Rent in this multi-unit building is due on the first day of each month.

On the night of June 27, 2015 the landlord was called to the rental building by the local fire department. The tenants had left a cigarette on the balcony that resulted in a fire. The fire department had to break in nine doors in the building to ensure other occupants were not home.

Photographs supplied as evidence show significant damage to the third floor balcony; the wall leading to the adjoining unit is burned through, significant refuse is on the floor of the balcony and the exterior of the building is fire-damaged. A photo of a door shows the level of damage that was caused by the fire department having to enter units using force. The entire balcony was damaged by the fire, including the building siding around the balcony.

The landlord said that the tenants did not dispute that a cigarette was not properly extinguished on their balcony. The onsite managers have told the agent that they are concerned that future catastrophic events may occur as the tenants appear to have problems with alcohol. The female tenant has fallen down the stairs as a result of suspected alcohol use.

This fire follows a flood caused by the tenants in January 2015. The tenants admitted to leaving the plug in the bathtub and forgetting the water was on. The landlord incurred \$2,000.00 in damage costs as a result of this flood.

The landlord has incurred over \$40,000.00 in total damage costs as a result of the actions of the tenants. The landlords' main concern is for the safety of other occupants in the building as the landlord has no confidence the tenants may not cause further risk, such as another fire, in the building.

Analysis

In order to establish grounds to end the tenancy early, the landlord must not only establish that they have 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. Having reviewed the testimony of the landlord and in the absence of the tenants who were served with notice of this hearing, I find that the landlord has met that burden.

In relation to sufficient cause, I find that the fire caused on June 27, 2015 was the result of the carelessness and neglect of the tenants. The lives of other occupants were placed at significant risk due to the failure of the tenants to ensure the cigarette was properly extinguished. The photographs demonstrate the extent of the fire damage as significant; which I find seriously jeopardized the safety of other occupants in the building. There can be no other conclusion drawn from the evidence before me.

I have considered section 56(2)(b) of the Act and find that it would be unreasonable and unfair for the landlord to wait for a notice to end tenancy under section 47 of the Act. Two recent incidents involving the carelessness of the tenants have caused damage to the residential property. The most recent clearly placed the lives of other occupants at risk.

I accept the landlords' submission that they cannot have any confidence the tenants will cease what appears to be a pattern of behaviour that could result in harm to others. I find that the risk of continuing the tenancy while waiting for a Notice to end tenancy to come into force is too high and cannot be assumed by the landlord.

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 tenants**. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

As the landlord's Application has merit I find that the landlord is entitled to recover the \$50.00 filing fee from the tenants.

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

If the landlord is holding a security deposit, pursuant to section 72(2) of the Act, the landlord may choose to deduct the filing fee cost from the deposit.

Conclusion

The landlord has cause to end the tenancy and it would be unfair or unreasonable for the landlord to wait for a Notice ending tenancy to take effect.

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

This decision is final and binding on the parties 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: July 31, 2015

Residential Tenancy Branch

