



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MURRAY HILL DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

ET FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, dated November 30, 2016 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on an immediate threat to life and or property; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by D.M., who provided a solemn affirmation. The Tenant did not attend the hearing.

On behalf of the Landlord, D.M. testified that the Tenant was served with the Landlord's Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, by registered mail on November 30, 2016. D.M. provided a tracking number in support. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Landlord's Application package is deemed to have been received by the Tenant on December 5, 2016.

The Landlord's agent was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

This claim involves a longstanding tenancy. However, the Landlord submitted a copy of the current agreement between the parties, which confirms a fixed-term tenancy for the period from October 1, 2016 to September 30, 2017. Rent in the amount \$751.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$297.50, which the Landlord holds.

The Landlord wishes to end the tenancy, alleging the Tenant distills alcohol in his rental unit, and that this constitutes an immediate threat to life and property.

The Landlord provided documentary evidence in support of the Application. The evidence includes an order, issued by the local fire service and dated January 26, 2015. At that time, the Tenant was ordered to “remove flammable/combustible being stored in [the rental unit]”. The Landlord also followed up with a letter to the Tenant bearing the same date. It stated: “we require you to comply with the [fire service] Order by day’s end.”

Subsequently, in a written agreement dated February 17, 2015, the Tenant agreed he would not remove or disable the smoke alarm installed in the rental unit, would obey the order issued by the local fire service, and would not produce alcohol on the premises. On February 21, 2015, the Landlord’s agent, D.M., confirmed that an inspection of the rental unit had been completed and that the Tenant had complied.

Recently, in a letter dated November 8, 2016, the Landlord’s agent advised that a maintenance person and a pest control technician entered the Tenant’s rental unit and observed “what appeared to be tubs and containers set up to produce alcohol.” The letter reminded the Tenant of the previous order and instructed the Tenant to dismantle this equipment. In addition, the Landlord advised the Tenant that another inspection of the rental unit would be conducted.

The Landlord did not perform a follow-up inspection. Rather, on November 28, 2016, a fire broke out in the rental unit. Police and fire services attended. D.M. testified to his belief the fire was caused by distilling activity. The Landlord submitted photographs of the fire damage into evidence, which were taken on November 28, 2016.

The Tenant did not attend the hearing to respond to the Landlord's Application.

Analysis

Based on the unchallenged testimony and documentary evidence, and on a balance of probabilities, I find:

Section 56 of the *Act* permits a landlord to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the *Act*.

The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2). This provision states:

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...

- (a) *The tenant or a person permitted on the residential property by the tenant had 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.*

In this case, the Landlord's agent testified that the Tenant's distilling activities caused a recent fire in the rental unit. The Landlord has applied for an early end to the tenancy as the Landlord is concerned about the ongoing safety issues presented by the Tenant's distilling activity.

I find the Tenant's activities have seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant, and have put the Landlord's property at significant risk. Further, I find that it would be unreasonable or unfair to the Landlord to wait for a notice to end the tenancy under section 47. Accordingly, the Landlord is granted an order of possession, which will be effective one (1) day after service on the Tenant.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application, which I order may be deducted from the security deposit.

Conclusion

The Landlord is granted an order of possession, which will be effective one (1) day after service on the Tenant. The order of possession may be filed in 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: December 21, 2016

Residential Tenancy Branch