



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession.

The hearing was conducted via teleconference and was attended by the landlords.

The female landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by posting it to the rental unit door on May 8, 2017 and that this service was witnessed by a third party in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 3rd day after they have been posted.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

At the outset of the hearing the landlords submitted that they believe that the tenant has moved out of the rental unit because his family has removed all of possessions inside the rental unit. However, the tenant has not provided the landlord with a notice to end tenancy and he still has personal possessions outside of the rental unit but on the residential property.

While the landlords submit that on May 25, 2017 the tenant provided a text message stating that he knows his possessions have been removed that someone will be back to pick up his other possessions they are uncertain if the tenant has relinquished possession of the rental unit.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession to end the tenancy early and without notice, pursuant to Section 56 of the *Act*.

Background and Evidence

The landlords submitted that the tenancy began on November 1, 2015 as a 1 year fixed term tenancy that converted to a month to month tenancy on November 1, 2016 for a monthly rent of \$1,200.00 due on the 1st of each month with a security deposit of \$600.00 paid.

The landlords submitted that on three occasions since January 2017 police have attended the property:

- January 24, 2017 – Ambulance, fire and police were called to the rental unit and that tenant was aggressive with paramedics;
- April 5, 2017 – Police attended the property to look for the tenant because his family had reported him missing. Upon entering the rental unit a space heater was found left on and the temperature in the unit was over 40 degrees Celsius; and
- May 5, 2017 – the landlord called police because of threatening and abusive behaviour exhibited toward an area resident and the worker's aerating the landlord's lawn.

The landlords submit that as a result of these incidents all members, but in particular, their children were scared to use the part of the basement in the residential property that the family used on a regular basis unless there was an adult with them.

The landlord's clarified that while they had indicated that they issued a "30 day eviction notice for failure to pay rent" on April 3, 2017 they determined it was not done in the correct form and as such they issued, on May 8, 2017 a 10 Day Notice to End Tenancy for Unpaid Rent and a 1 Month Notice to End Tenancy for Cause citing repeated late payment of rent.

Analysis

Section 56(1) of the *Act* states a landlord may submit an Application for Dispute Resolution to seek an order 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 (1 Month Notice to End Tenancy for Cause).

Section 56(2) states the director may grant an order of possession based on such an application if:

- a) The tenant or a person permitted on the residential property by the tenant has:
 - 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. has caused extraordinary damage to the rental unit or residential property; and
- b) It would be unreasonable, or unfair to the landlord or other occupants, to wait for a notice to end the tenancy under Section 47 to take effect.

In the case before me, I find that since the landlord had issued a 10 Day Notice to End Tenancy for Unpaid Rent on May 8, 2017 and there is no evidence before me that the tenant disputed that Notice and the tenant's family has removed all of his possession from inside the rental unit that the tenancy has ended and there is no need to grant the landlord the authority to end the tenancy early and without notice.

However, to ensure the tenancy has ended and in consideration of the safety of the landlord and their family, I find the landlord is entitled to end the tenancy without further notice.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 31, 2017

Residential Tenancy Branch