



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code ET

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, dated June 22, 2017 (the "Application"). The Landlords applied for an order of possession on the basis that the Tenant is an immediate threat to life and/or to property, pursuant to section 56 of the *Residential Tenancy Act* (the "Act").

The Landlords were represented at the hearing by their legal counsel, S.R. The Tenant did not attend the hearing.

According to S.R., the Landlords retained a process server to effect service of the Application package, which included the Notice of a Dispute Resolution Hearing and photographic images depicting damage to the rental unit. S.R. advised the Tenant was served with the Application package, in person, on June 30, 2017. I find the Tenant was served with the Application package on that date.

The Landlords also submitted a further documentary evidence package consisting of photographic images. The package was received at the Residential Tenancy Branch on July 31, 2017, one day before the hearing. On behalf of the Landlords, S.R. confirmed the images have not been served on the Tenant. S.R. indicated the images only recently became available as the Tenant would not permit entry to the property. As the evidence was only available recently and consists exclusively of images of the interior and exterior of the property, I find there is no prejudice to the Tenant in considering them. The Tenant lives at the property and is aware of the condition. In addition, I find that excluding the evidence would cause prejudice to the Landlords. Accordingly, I have considered the late evidence submitted by the Landlords in coming to a Decision.

On behalf of the Landlords, S.R. 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

Are the Landlords entitled to an order of possession?

Background and Evidence

On behalf of the Landlords, S.R. provided some background to the Application. He advised that his clients, the Landlords, are the co-executors of the Estate of the Tenant's deceased parents. The Tenant is a beneficiary of the Estate. Although there was no written tenancy agreement between the parties, S.R. confirmed they had a discussion confirming the Tenant would continue to occupy the property as a tenant. Although the Tenant was not required to pay rent, he was responsible to pay utilities.

The Landlords sought an order of possession based on an immediate threat to life and/or property. S.R. stated the Tenant suffers from mental illness issues and that his actions have caused extraordinary damage to the property. In support of the Application, the Landlords submitted numerous photographic images depicting the interior and exterior of the property. The images depict multiple holes in walls, broken kitchen cupboards and drawers, damaged blinds, smashed windows, tipped over kitchen appliances, broken doors, smashed china, as well as garbage and debris scattered throughout.

The Tenant did not attend the hearing to respond to or dispute the Landlords' evidence.

Analysis

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

Section 2 of the *Act* confirms that the *Act* "applies to tenancy agreements, rental units and other residential property."

Section 1 of the *Act* defines a "tenancy agreement" as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting

possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit;

[Reproduced as written.]

Although the agreement between the parties was not reduced to writing and may have been merely implied, I find that a tenancy agreement existed between the parties. As indicated by S.R., the Tenant was permitted to occupy the rental unit. Although he was not required to pay rent, he was responsible to pay utilities.

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, in the case of a landlord's application,

- (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 landlords 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.*

[Reproduced as written.]

In this case, the Landlords submitted compelling photographic evidence documenting the damage caused by the Tenant. I have no difficulty in finding that the Tenant has caused extraordinary damage to the residential property, which has been described above. Further, I find that it would be unreasonable or unfair to the Landlords to wait for a notice to end the tenancy under section 47. Accordingly, I find the Landlords are entitled to an order of possession, which will be effective immediately upon service on the Tenant.

Conclusion

The Landlords are granted an order of possession, which will be effective immediately upon 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: August 1, 2017

Residential Tenancy Branch