



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 Landlord's Application for Dispute Resolution, seeking an order to end the tenancy early and receive an order of possession, and to recover the filing fee for the Application.

The Landlord and two witnesses appeared, they each gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that he served the Tenant with the Notice of this Hearing and his Application for Dispute Resolution on August 13, 2017, by posting it to the door of the rental unit. The Landlord testified that the Tenant phoned him after receiving the documents and confirming receipt of these documents, nevertheless, the Tenant did not attend the hearing. Under the Act documents served by posting on the door are deemed received three days after posting. Based on section 90 of the Act, I find the Tenant has been served in accordance with the Act.

Issues(s) to be Decided

Is the Landlord entitled to end the tenancy early and obtain an order of possession?

Background and Evidence

The Landlord testified that this tenancy began in January of 2017. He testified that the monthly rent is \$1,200.000 and that the Tenant has paid a security deposit and a pet damage deposit.

The affirmed testimony of the Landlord is that the Tenant has, in contravention of the tenancy agreement, been smoking in the rental unit and playing loud music which disturbs other occupants.

However, he testified that he is much more concerned that the Tenant has many people coming and going from the rental unit on a daily basis. The Landlord alleges the Tenant is addicted to crack cocaine, is involved in the drug trade and is a prostitute. He further testified that the police have attended the rental unit on several occasions, most recently in early August, just days before the Landlord filed this Application.

The Landlord testified that the Tenant had not paid her rent for September 2017, and when he went to the rental unit to issue her a 10 day Notice to End for unpaid rent, he saw there was what appeared to him to be crack cocaine or another drug in on top of tin foil, which he saw in the rental unit. He talked to the Tenant about paying the rent and he alleges she told him she makes more money as a prostitute than she would at another type of job, but still has trouble paying the rent.

The Landlord testified that he tried to work things out with the Tenant to leave the rental unit by mutual agreement; however, the Tenant did not agree to move out.

The Landlord testified that he has been at the rental unit building, consisting of an up and down four unit building, and that he has personally heard the Tenant playing her music very loud while he is there.

The Landlord testified he spoke with the police who attended the rental unit, and in evidence the Landlord provided the name and badge number of the police officer who has conduct of the police file. He testified that the police officer informed him that the Tenant is known to the police and that she is a drug addict involved with drugs and prostitution.

The Landlord testified that the other occupants of the building have all complained to him about the Tenant since she moved in. The Landlord is concerned that the other renters will move out due to the Tenant's behavior, her disturbances and her frequent guests.

The first Witness ("N.B.") testified that about the end of June or early July there started to be a lot of vehicles being broken into around the residential building where the rental unit is located. He testified that this was unusual for their area and that he had witnessed one such incident and reported it to the police. He testified that the police

informed him that this vehicle break in was related to drugs. He alleges the police informed him that they believe drugs are being sold from the rental unit. He testified that the police were monitoring the rental unit over the August long weekend and told him they are aware that people going to the rental unit were involved in the drug trade and they were potentially very dangerous.

Witness N.B. testified that there is a constant “parade” of vehicles coming to and going from the rental unit. He testified it was not unusual to see three to five vehicles come and go in a day or during an evening.

Witness N.B. further testified that there was a break-in in the residential property in a neighbour’s rental unit and alleged the person who broke in thought it was the Tenant’s rental unit by mistake.

Witness N.B. also testified that smoke from the Tenant smoking is entering his rental unit many times during the day and night. He testified that the Tenant often has very loud music playing in the rental unit and it is disturbing him even during the day, yet alone the evening and night.

A second witness appeared (“M.M.”) and provided affirmed testimony that she is fearful for her safety and that of her spouse and the other people who live in the building. She testified she has lived in the building where the rental unit is located for two years and prior to the Tenant moving in, it was a quiet building with good neighbours. She testified that now there are people coming to and going from the subject rental unit at all hours of the day and night. She testified she has seen older men taking out money from their wallets and entering the rental unit and then leaving 20 to 40 minutes later. She testified this happens several times a day, and nearly every day.

Witness M.M. further testified that in late July she saw the police watching the rental unit property and she spoke with the police. Witness M.M. testified the police informed her they had the Tenant and the rental unit under surveillance, and that the Tenant was a crack cocaine user well known to them, and they were concerned with the Tenant’s safety. Witness M.M. testified that over the course of the next three days, into early August, the police attended the rental unit daily to speak with the Tenant.

Witness M.M. testified that she has seen the Tenant advertise herself as an escort on the Internet and that she recognises the Tenant from the photo that was posted with the escort advertisement.

Witness M.M. testified she is very concerned for her safety due to the large number of “sketchy” men she sees coming to and going from the rental unit at all hours of the day and night. She testified she has also heard conversations from the subject rental unit about what she alleges is to be involving the drug trade, such as “I’m all out”, “I’m dry”, and “I am getting a shipment soon”. She testified there is a lot of foot and bike traffic coming to and leaving the rental unit as well.

Witness M.M. further testified that she has seen the Tenant throw still burning cigarettes outside of the rental unit, and that the Witness has had to put these out on at least three occasions. She testified that cigarette smoke from the Tenant is wafting up into their bathroom of their rental unit and is causing them discomfort and having to clean the bathroom walls due to the constant smell of smoke entering their rental unit.

The Landlord then testified that when he discussed the many men coming to the rental unit with the Tenant, the Tenant informed him that she would not see clients there anymore. He testified that the behaviour of the Tenant would improve for a few days, then the complaints from other renters about loud noise and men attending the rental unit would start again. He testified that the other occupants of the building are very upset and worried about the loud and disruptive behaviour of the Tenant. The Landlord is concerned he may lose his good renters due to the behaviour of the Tenant. The Landlord said he has had many complaints about the cigarette smoke and loud music coming from the rental unit.

Analysis

Under section 56 of the Act, a landlord may make an application for dispute resolution to request an order

(a) 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 [*landlord's notice: cause*], and

(b) granting the landlord an order of possession in respect of the rental unit.

Under section 56 (2) of the Act, an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession may be granted if the director or their delegate (an arbitrator), is satisfied that:

(a) the tenant or a person permitted on the residential property by the tenant has 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.

Based on the foregoing, the uncontradicted evidence and testimony, and on a balance of probabilities, I find and I am satisfied that the Tenant, or a person permitted on the residential property by the Tenant, has significantly interfered with and unreasonably disturbed other occupants of the residential property.

I further find that the Tenant has seriously jeopardized the health and safety, and the lawful rights of the other occupants of the property. I find that the constant traffic of people coming and going from the rental unit, the police attending, the loud music, and the smoking are interfering with and disturbing other occupants at the building and are

adversely affecting their rights to quiet enjoyment and have affected their feeling of safety in the building.

I find and I am satisfied that it would be unreasonable and unfair to the Landlord or the other occupants to wait for a notice to end tenancy under section 47.

Therefore, pursuant to section 56, I grant the Landlord an order of possession for the rental unit effective two (2) days after service upon the Tenant, and I grant and issue the order in this form. This order may be enforced through the British Columbia Supreme Court.

I also order that the Landlord may retain **\$100.00** from the security deposit held in compensation for the filing fee for the Application.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Pursuant to section 77 of the Act, a decision or an order is final and binding on the parties, except as otherwise provided in the Act.

Dated: September 11, 2017

Residential Tenancy Branch