



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, O, ET

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution wherein the Landlords requested an early end to tenancy pursuant to section 56 of the *Act* and to recover the filing fee.

The hearing was conducted by teleconference on September 27, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Landlords be granted an end of tenancy and an Order of Possession?
2. Should the Landlords recover the filing fee?

Background and Evidence

The Landlord, B.C., testified that the tenancy began as a one year fixed term tenancy approximately four years ago following which it continued on a month to month basis.

B.C. stated that for the first few years of the tenancy he did not have any problems with the Tenant. He confirmed that, until July of 2017, he had not been in the rental unit for some time

as the Tenant paid his rent through post-dated cheques and did not report any issues requiring the Landlords' attention.

B.C. stated that he and his realtor entered the rental unit on July 15, 2017 with the permission of the Tenant, and for the purposes of listing the rental property. He stated that at this time the realtor saw guns in the rental unit. He stated that he did not see the guns but observed that the rental unit was in very poor condition. He reported that he observed significant damage to the unit including: staining and moulding of the carpet, staining of the tile grout; damaged drapes and a mouldy ceiling. The Landlord stated that it was clear that the Tenant had been smoking in the rental unit, despite the fact that smoking is prohibited. He also testified that the bathtub had rust stains and the microwave has stains, which appear to be blood stains. He stated that the stove and refrigerator are seriously scratched. He also stated that the toilet and floor are covered in what appears to be gun powder and metal pieces. Most concerning to the Landlord was that the smoke detectors had been removed.

The Landlord testified that he then served the 1 Month Notice to end Tenancy dated July 19, 2017 by registered mail. A copy of the tracking number is provided on the unpublished cover page of this my Decision. The Landlord stated that the Tenant applied to dispute the Notice which is scheduled to be heard on October 4, 2017. The Landlord confirmed that he also has an application set for hearing on October 4, 2017 for a monetary claim relating to the damage to the rental unit.

The Landlord stated that he has attempted to talk to the Tenant, but the Tenant will not answer the phone or the door. The Landlord stated that on August 14, 2017, and after serving a Notice of Entry, he went to the rental unit and knocked but no one answered, although the Landlord could see someone in the rental unit.

The Landlord further testified that on August 22, 2017 he posted another Notice of Entry for entry on August 26, 2017. He stated that he entered the rental unit with the police as he was concerned about the guns the realtor had observed in July. He stated that on this date, he also saw two hand guns by the stove in the kitchen. He stated that it appeared as though the guns were being worked on by the Tenant.

Introduced in evidence was a letter from the police indicating that the two guns were found in the rental unit. The letter informs that the guns were determined to be pyrotechnic launchers and were returned to the Tenant.

The Landlord stated that in the past the Tenant told him "if anyone 'f's' with me, they better leave town". The Landlord stated that he is fearful of the Tenant as a consequence of this general threat, as well as the guns in the rental unit.

The Landlord stated that he is concerned that the Tenant has removed the smoke detectors and is manufacturing guns or some other type of explosives within the unit. He also stated that the

Tenant has and will continue to cause serious damage to the rental unit; he further noted that the vents are all covered in black indicating the Tenant has been smoking heavily in the rental unit, which is of particular concern as the Tenant has removed the smoke detectors.

The Landlord's witness stated that he entered the rental unit with the Landlord in July of 2017 and the rental unit was filthy. He stated that he told the Landlord that he did not want to list the property because it wasn't presentable at all. He stated that the rental unit was filthy and there were dirty dishes all over the place as well as clutter all over the floor. He stated that the bathroom had black grease all over the place and it was so bad he did not want to step in the bathroom. He also stated that he observed that the smoke detectors were unplugged. He also confirmed that he saw the guns.

Photos of the rental unit showed the dishes on the counter in the kitchen, clutter on the floors as well as black grease/powder all over the toilet and bathroom floor. The remainder of the photos were not visible to me.

The Tenant did not announce his presence until forty minutes into the hearing. Despite this, he confirmed that he was present the entire time and had listened to all of the Landlords' evidence.

In response to the Landlord's claims the Tenant testified as follows. He stated that he had to remove the smoke detectors because as soon as he cooks they go off. The Tenant claimed that he only occasionally smokes in the rental unit and does so in the bathroom.

The Tenant stated that the "black stuff" on the toilet and floor came from the toilet approximately a year ago; he claimed that he flushed the toilet and something which looked like "used car oil" came up through the toilet and stained the toilet seat and floor. The Tenant stated that he did not tell the Landlord about this, as he claims the Landlord would not talk to him.

The Tenant stated that the guns are not guns, they are pyrotechnic certified launchers. He stated that he is an engineer and he is working on improving the design. He stated that the police seized them, but returned them after determining they were not guns.

The Tenant stated that the Landlords' claims that he damaged the rental unit are absolutely not true. The Tenant claimed that it was impossible to scratch a stainless steel fridge.

The Tenant stated that the moisture build up in the rental unit is a result of the fact that he does not have a heat source and must heat up the rental unit with the hot water from the shower. He also stated that the "black stuff" on the vents is due to the moisture from the shower and the dust in the air combining and accumulating in the rental unit. He confirmed that he did not inform the Landlord that his heat source was inoperable.

The Tenant stated that he was injured approximately two years ago and he is not able to attend to the cleaning as needed. He stated that he hasn't had a dishwasher for two years and mostly

eats take out. The Tenant stated that realizes that heating the rental unit with the shower is not appropriate, but he said with his injury he hasn't been able to deal with anything as "everything else has been put on the back burner".

The Tenant also stated that the toilet is broken in that the plastic handle is broken off; he confirmed he has not told the Landlord about this.

The Tenant claimed that he did not make any threats to anyone.

In reply to the Tenant's submissions the Landlord stated that the Tenant did not inform him that he did not have a heat source, nor did the Tenant tell him that a black substance had come up through the toilet.

Analysis

Section 56 of the *Act* allows a tenancy to be ended early without waiting for the effective date of a one month Notice to End Tenancy if there is evidence that the tenant(s) have breached their obligations under the tenancy agreement or *Act* and it would be unreasonable or unfair to wait for the effective date of a one month Notice to End Tenancy. For greater clarity I reproduce that section as follows:

56 (1) 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.

(2) 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 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.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

After careful consideration of the foregoing, the testimony of the parties, the documentary evidence filed, and on a balance of probabilities I find that the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant and has put the landlords' property at significant risk.

The testimony of the Landlord and his witness confirm that the rental unit has not been cleaned and has been significantly damaged by the Tenant. The photo of the toilet shows that the Tenant has not honoured his obligations pursuant to section 37 to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. The Tenant admitted that since his injury he has not been able to clean the rental unit as required, and the evidence of the Landlords suggests that this lack of cleaning and maintenance has caused significant damage. The Tenant suggests that approximately one year ago a black substance came up through the toilet; even if this were the case (which I find unlikely) the fact the substance has not been cleaned off in the intervening year is indicative of the Tenant's failure to clean the rental unit. I find it more likely that the black substance observed in the photos is gun powder, as postulated by the Landlord. Consequently, I find that the Tenant is putting the Landlords' property at risk and creating a safety issue by smoking in the rental unit and in the presence of gun powder. Further, based on the testimony of the Landlord, I find that the Tenant has heavily smoked in the rental unit and has created a safety issue for others in the building by disconnecting the smoke detector.

The Tenant admitted that he has used the shower to heat the rental unit, and has not informed the Landlord of the lack of heat source. This is an unacceptable solution to a problem which should have been reported to the Landlord in a timely manner. In failing to do so, the Tenant has created a situation where damaging mould has accumulated in the rental unit.

As the effective date of the notice has passed, I need not consider whether it would be unreasonable or unfair to the Landlord to wait for a one month Notice to End Tenancy to take effect.

In all the circumstances, I grant the Landlords' application to end this tenancy early.

The Landlords are reminded that they are permitted to make regular inspections of rental units provided they comply with section 29 of the *Act*.

Conclusion

The Landlords are granted an Order of Possession effective **two (2) days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the British Columbia Supreme Court and 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: September 28, 2017

Residential Tenancy Branch