



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BENTINCK HOLDINGS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:29 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord's representative attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Landlord JN gave undisputed sworn testimony that he handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on October 2, 2017. I find that the 10 Day Notice was served to the tenant in accordance with section 88 of the *Act* on October 2, 2017.

Landlord DC testified that he sent the tenant a copy of the dispute resolution hearing and written evidence package on October 22, 2017 by Canada Post's Expresspost service, requiring a signature upon successful delivery. He entered into written evidence a copy of the Canada Post Tracking Number to confirm this mailing. Although this package was returned to the landlord as unclaimed, I note that the name of the Respondent was misspelled on that mailing, so it is possible that the Respondent would not have been able to obtain it had he attended the Canada Post station to pick up the package. Both landlords who attended the hearing testified that they also handed the tenant a copy of the dispute resolution hearing and written evidence package on October 27, 2017 outside the rental unit. They entered into evidence a copy of a

photograph they took of their delivery of this package to the tenant on that day. Based on the undisputed evidence and testimony from the landlord's representatives, I find that the dispute resolution hearing package and written evidence package were served to the tenant on October 27, 2017, in accordance with sections 88 and 89 of the *Act*.

At the hearing, the landlord's representatives corrected the spelling of the tenant's name to the spelling noted above so as to coincide with the spelling of his name on the signed Residential Tenancy Agreement entered into written evidence by the landlords. In accordance with the powers delegated to me under the *Act*, I have made this amendment as requested by the landlord's representatives.

Issues(s) to be Decided

Is the landlord entitled to an early end to this tenancy and an Order of Possession. Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy began on July 1, 2017. Monthly rent is set at \$1,600.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$800.00 security deposit paid on July 1, 2017.

The landlord issued the 10 Day Notice for unpaid rent of \$1,600.00.

Although the landlord has not issued any 1 Month Notice to End Tenancy for Cause (a 1 Month Notice), many of the behaviours and actions of the tenant may have given the landlord reason to do so.

The landlord's representatives entered into written evidence and sworn testimony a number of reasons why they were seeking an immediate end to this tenancy. They provided copies of letters from the building caretaker who lives next to the tenant as well as documents referencing complaints they have received from other tenants in the building. They provided undisputed evidence that a number of the residents in this strata building are justifiably frightened and scared of the tenant. Some of these incidents involved the tenant's attempts to enter this controlled access building by buzzing tenants late at night when he was apparently inebriated. They provided undisputed evidence that the tenant banged on tenants' windows to try to gain access to the building and that he frequently creates noise and disturbance, sometimes as late as 3:00 a.m. when he returns to the rental property on his motorcycle. The landlord's

representatives also maintained that the tenant has broken a window in the rental unit such that he and his friends can access the building without having to use the controlled access door to this strata building. The landlord's representatives also claimed that the recent inspection revealed a huge mess within the rental unit, which presented a fire hazard.

Landlord DC also outlined recent events that have occurred since the landlord issued the tenant the dispute resolution hearing package. Landlord DC said that the landlord has learned that the tenant's hydro has been cut off. The tenant has run extension cords from common areas of the building illegally, causing a potential fire hazard. Landlord DC also described a situation where a friend who was visiting the tenant caused a flood in the common area of the building, leaving the water running after he washed his bike. He said that there have been an ongoing series of complaints about the tenant over the past few weeks, usually a new complaint every day from someone in the building. On at least one of these occasions, the police were called to intercede.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

it would be unreasonable, or unfair to the landlord, the tenant 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 has only issued a 10 Day Notice for unpaid rent. The landlord has not issued any 1 Month Notice for Cause pursuant to section 47 of the *Act*.

Based on the undisputed written evidence and sworn testimony of the landlord's representatives, I find that sufficient evidence has been provided to warrant an end to this tenancy for the reasons outlined in the first portion of section 56, as outlined above. I find that the tenant has significantly interfered with or unreasonably disturbed other occupants in this multi-residential building. There is also sufficient evidence to demonstrate that the tenant has seriously jeopardized the health or safety or a lawful right or interests of other occupants in this building.

The second test to be met in order for a landlord to obtain an early end to tenancy pursuant to section 56 of the *Act* requires that a landlord demonstrate that "it would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47" for cause to take effect. On this point, I find that many of the reasons cited by the landlord's representatives for circumventing the standard process for ending a tenancy for cause do not meet the test required to end this tenancy early. For example, I see no compelling reason why the landlord could not go through the standard process for ending a tenancy for cause due to a messy rental unit, a broken window, or the tenant's attempts to siphon off hydro from common areas. While these types of incidents might warrant an end to a tenancy for cause, they do not demonstrate how it would be unreasonable or unfair to end the tenancy early and without issuing the correct notice to end tenancy for cause pursuant to section 47 of the *Act*.

The complaints lodged by residents in this building about the tenant's actions and behaviours are considerably more worrisome. Although it would have been preferable to have some of these residents in attendance at the hearing to provide direct sworn testimony, I also note that the tenant has not chosen to appear at this hearing, nor has he provided any contrasting accounts by way of written evidence. I find that the landlord has provided sufficient evidence that there has been an escalating pattern of behaviour from the tenant that has caused other residents in this building to become frightened and worried about their safety, which also impacts their right to quiet enjoyment of their residences. Of particular concern is the ongoing series of complaints about the tenant received by the landlord's representatives over the past few weeks,

leading up to this hearing. Under these circumstances, I find that it would be unreasonable and unfair to other tenants in the building and the landlord to wait for a 1 Month Notice to End Tenancy for Cause to take effect. For these reasons, I find that the landlord has provided sufficient undisputed evidence to warrant ending this tenancy early. I issue a two day Order of Possession to the landlord.

As the landlord has been successful in this application, I allow the landlord's application to recover the \$100.00 filing fee from the tenant. Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain this \$100.00 from the security deposit.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord to recover the \$100.00 filing fee by allowing the landlord to retain \$100.00 from the security deposit for this tenancy. The revised value of the security deposit currently retained by the landlord is reduced from \$800.00 to \$700.00.

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: November 14, 2017

Residential Tenancy Branch