



Dispute Resolution Services

Page: 1

Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's application pursuant to section 56 of the *Residential Tenancy Act* (the *Act*) for an early end to this tenancy and the issuance of an Order of Possession.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:37 a.m. in order to enable them to call into this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Matters – Service of Documents

The landlord's building manager (the building manager) gave undisputed sworn testimony that she posted the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on the tenants' door on October 10, 2017.

The building manager provided conflicting sworn testimony regarding the date when she posted the dispute resolution hearing package on the tenants' door. She initially testified that she posted this package on the tenants' door on October 26, 2017, the day after the landlord applied for dispute resolution. As she seemed uncertain on this point, I asked Landlord representative EM (the landlord) to identify the date in the upper right hand corner of the Residential Tenancy Branch's (the Branch's) Notice of Hearing, the date on which this Notice was created by the Branch. The landlord said that the Notice was dated November 1, 2017. As the Notice of Hearing was not created by the Branch until November 1, 2017, I asked the building manager to explain how she could have posted the dispute resolution hearing package containing the Notice of Hearing on October 26, 2017. After consulting with the landlord, the building manager revised her sworn testimony, maintaining that she had been in error and that she actually posted the dispute resolution hearing package on the tenants' door on November 2, 2017. On the basis of this revised sworn testimony and in accordance with sections 89 and 90 of the *Act*, I accept that the tenants were deemed served with the dispute resolution hearing package including the Notice of Hearing on November 5, 2017, three days after the documents were posted on their door.

The landlord's representatives gave undisputed sworn testimony that copies of the landlord's written evidence were sent to both tenants in separate registered mailings on November 9, 2017. They provided Canada Post Tracking Numbers to confirm these two registered mailings. I find that the landlord's written evidence was deemed served to the tenants in accordance with sections 88 and 90 of the *Act* on November 14, 2017, five days after their registered mailing.

Rules 3.1 and 3.2 of the Branch's Rules of Procedure apply to the service of evidence to be relied upon during a standard application and an application for an early end to tenancy:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;*
- b) the Respondent Instructions for Dispute Resolution;*
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and*
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].*

3.2 Evidence relating to an early end to a tenancy

When a landlord is seeking an early end to the tenancy, the landlord must submit all evidence with the Application for Dispute Resolution, or, when applying using the Online Application for Dispute Resolution, the next day. All evidence to be relied on at the hearing must be served on the respondent with the Notice of Dispute Resolution Proceeding Package described in Rule 3.1.

In this case, the landlord did not comply with the requirement in Rule 3.2 of the Rules of Procedure to serve evidence to be relied upon at the hearing at the same time as the Dispute Resolution Proceeding Package. While the building manager posted the Dispute Resolution Proceeding Package on the tenants' door on November 2, she did not send the written evidence by registered mail until November 9, 2017. As such, I cannot consider the landlord's written evidence.

Issues(s) to be Decided

Is the landlord entitled to an early end of tenancy and an Order of Possession?

Background and Evidence

This tenancy for a main floor unit in a 60 unit rental building began on June 15, 2013 as a one-year fixed term tenancy. This fixed term converted to a month-to-month tenancy upon the end of the initial fixed term on June 1, 2014. Current monthly rent is set at \$1,147.00, payable in advance on the first of each month. The landlords continue to hold a \$525.00 security deposit and a \$525.00 pet damage deposit paid in June 2013, when this tenancy began.

The landlord issued the 1 Month Notice after conducting inspections of the rental unit in October 2017. The landlord confirmed that the following reasons were identified in the 1 Month Notice:

Tenant or a person permitted on the property by the tenant has:

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;...*
- put the landlord's property at significant risk.*

I note that the earliest that a 1 Month Notice issued on October 10, 2017, could take legal effect would be November 30, 2017.

The sworn testimony from the landlord's representatives at this hearing revealed that the reasons for the landlord's issuance of the 1 Month Notice and the application to obtain an early end to this tenancy involved the problems caused by the tenants' cats in this rental unit. The landlord said that the smell of cat urine was evident in the nearby common areas of this rental building. Multiple cats living in the rental unit were not using litter boxes, there was cat urine and cat feces on the carpets and the landlord expressed concern that the damage being caused by the tenants' cats would be expensive to repair and presented high risks to health and safety.

After the landlord and the building manager inspected the rental unit, the landlord arranged for one of its employees, the Health and Safety Manager MDM (the Health and Safety Manager) to return to the rental unit the following day to conduct an informed and professional evaluation of the risks evident in the rental unit. The Health and Safety Manager outlined his professional credentials, and I accept his undisputed sworn testimony that he is qualified as an expert witness as a licensed building inspector, an occupational health and safety inspector, and an expert on mould and asbestos.

The Health and Safety Manager gave undisputed sworn testimony that the problems caused by the cats in the tenants' rental unit have already led to significant damage to the landlord's property, and will likely worsen quickly. He testified that cat feces has stuck to the carpet and cat urine has clearly leaked through the carpet and underlay to the concrete slab below the floor coverings. He said that the carpets will need to be replaced, flooring and sub-flooring will have to be removed, and wire scrubbers will need to be used to try to clean the concrete base to the floor of this rental unit. He also said there is a significant pathogen risk associated with extensive cat urine when left unattended, which would make it increasingly more difficult for the landlord's staff to undertake any routine or unexpected maintenance in the rental unit should that become necessary. He noted that it could present a health and safety risk to the landlord's staff who could refuse to undertake work that they consider hazardous. Although he could not estimate accurately how long this situation may have been in place, he suspected that damage caused by the cats in the rental unit had been occurring for at least a few weeks to a few months, but not likely for more than a year. He said that the cost of remediating this rental unit will be high. In his opinion, allowing the situation to deteriorate further will only lead to an escalation of additional costs as cat urine will continue to leak through to the concrete slab, rendering it increasingly more difficult to repair.

The landlord also testified as to the odour resulting from the tenants' rental unit, which she and the other landlord's staff found extremely offensive. She said that her experience with other rental units affected by cat urine and cat feces led her to believe that this was a situation that could not wait until consideration of an application to end the tenancy on the basis of the 1 Month Notice could take effect.

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.

I should first note that I have little doubt that the landlord would be successful in obtaining an end to this tenancy for cause, especially if written and photographic evidence were submitted in a timely fashion to support the sworn testimony received.

I find that the landlord's sworn testimony satisfied the first portion of section 56 of the *Act* as outlined above. I find that the landlord has demonstrated to the extent required that the tenants have put the landlord's property at significant risk.

As noted above, I must also be satisfied that the landlord's application has also demonstrated that it would be unreasonable or unfair to the landlord to have to wait for an Order of Possession to be obtained on the basis of the 1 Month Notice. As I noted at the hearing, this second portion of section 56 establishes a very high test to be met in order to obtain an early end to a tenancy and an Order of Possession. In considering this portion of the test the landlord had to meet, I must do so without the benefit of the landlord's written and photographic evidence.

In considering the second portion of section 56, I rely heavily on the sworn testimony of the landlord's Health and Safety Manager, an accredited expert in assessing the health and safety implications of circumstances presented in rental units. I found his description of the damage caused by the tenants' cats detailed and focussed on the extent to which a continuation of this tenancy could lead to even more damage to the landlord's property. While the testimony of the landlord's other representatives was less compelling, I found the Health and Safety Manager's undisputed sworn testimony established that a further delay of weeks or months could lead to significantly more damage and health risks to the landlord's rental property. Although this situation may have been ongoing for many months and a continuation of the existing situation might not lead to noticeably more damage, the tenants chose not to participate in this hearing to convey details as to how long the existing situation has been in place. Without any evidence or testimony from the tenants, I attach considerable weight to the undisputed sworn testimony of the landlord's Health and Safety Manager and his professional opinion that the landlord's rental unit is at serious risk of deteriorating to the extent to which successful repairs may become very difficult to undertake. Under these circumstances, I find that the landlord has established sufficient undisputed sworn testimony to demonstrate that it would be unreasonable or unfair to the landlord to allow this tenancy to continue until such time as an Order of Possession on the basis of the 1 Month Notice could be obtained. For these reasons, I allow the landlord's application to end this tenancy early and issue an Order of Possession on that basis. As there was no assertion by the landlord that the

tenants have failed to pay their monthly rent, I assume that the landlord has accepted rent payments for this month.

Conclusion

The landlord's application for an early end to this tenancy is allowed. The landlord is provided with a formal copy of an Order of Possession effective at 1:00 p.m. on November 30, 2017. 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.

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 24, 2017

Residential Tenancy Branch