



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 11:12 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 10:30 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.

The landlord testified that he handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on October 2, 2017. I am satisfied that the 10 Day Notice was served to the tenant on that date in accordance with section 88 of the *Act*.

The landlord's spouse testified that the dispute resolution hearing package and written evidence package was handed to the tenant on October 18 or 19, 2017. Based on this undisputed sworn testimony, I find that the tenant was served with these packages in accordance with sections 88 and 89 of the *Act* on October 19, 2017, the latter of the two dates cited by the landlord's spouse.

At the hearing, the landlord testified that the female tenant EP vacated the rental unit a few months earlier. For that reason, he requested that any Order of Possession issued as a result of his application only be directed at Tenant DM, the sole remaining tenant.

During the course of the hearing, the landlord's son acted as his advocate as his facility in the English language was superior to that of his parents.

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 month-to-month tenancy for the lower level of a two-storey duplex began on August 1, 2013. Monthly rent is set at \$1,100.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$550.00 security deposit.

The landlord's spouse testified that the 10 Day Notice was issued for unpaid rent of \$1,100.00 for October 2017, plus \$320.00 that was outstanding from September 2017. She said that the tenant has still not paid any of these amounts, and has also failed to pay his November 2017 rent.

In the written and photographic evidence provided by the landlord, the landlord requested an early end to this tenancy, which included the following issues of concern to the landlord:

- junk and garbage inside and outside the rental unit;
- multiple tickets having been issued by the municipality;
- fraudulent activity by the tenant to secure an unauthorized tenant;
- odour and smells coming from the tenant's garbage;
- boarding up of the tenant's carport;
- remodelling inside the house without the landlord's authorization; and
- removing walls to open up the living and dining room space without the landlord's consent.

At the hearing, the landlord and his son gave more detail regarding the landlord's claim that he had been affected by fraudulent activity by the tenant. The landlord's son testified that the tenant secured a roommate by forging the landlord's signature on an Intent to Rent form which was submitted to the Ministry of Social Development to secure Shelter Assistance for the roommate. That roommate moved into the rental unit without the landlord's authorization. The landlord contacted the Ministry office and the police about this matter and a Police file was created regarding the forging of the landlord's signature on this document. The landlord's son said that his parents were very concerned that the tenant would continue such illegal measures to secure new roommates with whom he could share rent without the landlord's permission.

The landlord and his son also testified regarding a fight that ensued when the roommate realized that the landlord had not agreed to allow him to live in the rental unit. On that occasion, the roommate and his female friend who was also living there were involved

in a lengthy dispute, which required the attendance of the police at the rental unit. The landlord's son said that the female tenant in the other unit in this duplex contacted him shortly after this incident, expressing concern about her safety, given that the dispute extended into her rental unit when the female friend of the roommate ran into her apartment.

The female tenant in the upstairs rental unit, MT, gave sworn testimony confirming the account provided by the landlord's son. She said that her male friend was at her rental unit on October 26, 2017, when the dispute commenced in the tenant's rental unit. Her male friend provided her with an ongoing account of what was happening in the lower rental unit before she returned home. She said that there was a lot of noise from the smashing of belongings against the walls and the floor, and very clearly a violent confrontation involving all three participants in the lower unit that day. After the police arrived and escorted the roommate and his female friend from the rental unit, the roommate and his female friend returned later that evening to continue the dispute. MT testified that the roommate's female friend ran upstairs and entered MT's dwelling before MT confronted her and told her that she was trespassing on her space. Although the roommate's female friend remained at the tenant's rental unit for a few days after this incident, she subsequently left the rental property. MT said that she feels very unsafe in her rental unit as a result of the incidents involving those residing in the rental unit below her and is concerned that the tenant may continue attempting to bring in other roommates to share the rental costs of his accommodation.

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 much of the landlord's application appears to be based on a mistaken understanding of the exceptional circumstances for which an early end to tenancy is available to landlords. An application for an early end to a tenancy should not be available as a means of expediting the process whereby a landlord can obtain possession of a rental unit for unpaid rent. Non-payment of rent, excessive clutter and garbage on a rental property, and unauthorized alterations to a rental unit would all seem to fall far short of the test outlined in section 56 where it would have to be unreasonable or unfair to allow a tenancy to continue until a notice to end tenancy for cause could take effect. In this instance, the only notice to end tenancy issued by the landlord has been the 10 Day Notice of October 2, 2017. No notice to end tenancy for cause has even been issued.

Despite the presence of many reasons in the landlord's application which I find do not meet the test required to obtain an early end to this tenancy, there are other reasons that are more compelling and of significantly more concern. The landlord and his son presented undisputed sworn testimony that the tenant was involved in illegal activity when he forged the landlord's signature on an Intent to Rent form. I find that the landlord has demonstrated to the extent required that the tenant engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of the landlord. These actions had a direct bearing on the subsequent incident of October 26, 2017, which required the attendance of the police to resolve. The roommate and his female friend were apparently quite annoyed that the landlord had not actually agreed to allow them to reside in the rental unit. I find that the landlord has well-founded concerns that the tenant may repeat this method of finding someone willing to share the rent due for this tenancy, without the landlord's consent.

As outlined above, in order to allow an application for an early end to a tenancy I must also be satisfied that it would be unreasonable or unfair to either the landlord or another

occupant of the rental property to wait for a properly issued notice to end for cause to take effect. In this case, I found the testimony of MT very helpful. Her undisputed description of the events of October 26 and her very clear concerns about her safety given the tenant's willingness to accept roommates without the landlord's consent leads me to believe that it would be unreasonable and unfair to delay this process until a notice to end tenancy can take effect. For these reasons, I allow the landlord's application for an early end to this tenancy and issue a two day Order of Possession.

As the landlord has been successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant. Although the landlord has not applied to obtain a portion of the tenant's security deposit, in accordance with paragraph 72(2)(b) of the *Act*, I order the landlord to retain \$100.00 from the tenant's security deposit as a means of recovering the filing fee for the landlord's application.

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 \$550.00 to \$450.00.

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