



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on November 16, 2017, wherein the Landlord sought an early end to tenancy pursuant to section 56 of the *Residential Tenancy Act*.

The hearing was conducted by teleconference on January 8, 2018. Only the Landlord's representatives called into the hearing. They 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's representative, B.F., Tenant testified that they served the Tenant with the Notice of Hearing and the Application on December 21, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of December 26, 2017 and I proceeded with the hearing in his absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's 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.

Issue to be Decided

1. Is the Landlord entitled to an early end to tenancy?

Background and Evidence

Previously, and on March 6, 2017, the Landlord applied for an early end to tenancy; the hearing of that application occurred before me on March 30, 2017. The circumstances giving rise to the March application related to the Tenant's friend, F.M. The parties submitted at that time that F.M. was a convicted sex offender and had been living with the Tenant while on parole. I was advised by the parties that F.M. was incarcerated at the time of the hearing on March 30, 2017 for breach of his parole and for additional sexual offences which were alleged to have occurred at the rental property. B.F. testified at both hearings that the nature of those allegations was that F.M. was masturbating in the laundry room when a female tenant walked into the laundry room.

The March 7, 2017 application was resolved mutual agreement, the terms of which were recorded in my Decision dated March 30, 2017 as follows:

1. The tenancy agreement between the Tenant, G.W. and the Landlord signed February 15, 2013 shall be amended to remove the name of the previous occupant, F.M., from the agreement. The parties are at liberty to enter into a new agreement provided that the terms are the same as the agreement entered into February 15, 2013, save and except for the removal of the occupant's name, and current rent amount.
2. The tenancy shall continue until ended in accordance with the *Act*.
3. The Tenant, G.W., shall ensure the occupant, F.M., does not attend the rental unit, the rental building or the rental premises.
4. The Tenant shall communicate in writing to the occupant, F.M., by no later than April 6, 2017, that he is no longer permitted at the rental unit, rental building or rental premises. The Tenant shall communicate arrangements with F.M. for the retrieval of F.M.'s personal effects such retrieval to include clear instructions that F.M. is not to attend the rental unit, rental building or rental premises. This letter shall be copied to the Landlord.
5. The Tenant shall ensure he obtains from F.M. any and all access keys to the rental unit, rental building or rental premises.

6. Should the Tenant permit F.M.'s attendance at the rental unit, rental building or rental premises, the Landlord shall be entitled to seek an early end to tenancy on the basis the Tenant has breached this Order pursuant to section 47(1)(l) of the *Residential Tenancy Act*.

At the January 8, 2018 hearing B.F. stated that the Tenant allowed F.M. to reside at the rental unit contrary to the above agreement.

B.F. further stated that he received a letter from the Tenant, dated December 28, 2017, wherein the Tenant informed the Landlord he intended vacate the rental unit as of January 31, 2018. In the letter the Tenant writes:

"Further to our conversation of December 28, 2017, this is to advise that I will be vacating my apartment at [rental unit address] you may contact me by email. My roommate, F.M., is still in the unit due to family emergency this Christmas I have had to leave [city in which rental unit is located] for an indefinite period of time. I regret this action is necessary but I wish to avoid this stupid bull***t of the arbitration action you chose to take against me over a trivial item. My wife passed away of pancreatic cancer days before Christmas and I am in no mood to deal with this foolishness since the outcome is already sealed against me."

Analysis

After consideration of the undisputed testimony and evidence of the Landlord, and in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord's agents and corroborated by their evidence.

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.

I find that the Tenant has breached section 47 of the *Act* by allowing F.M. to attend and reside at the rental unit and in doing so has seriously jeopardized the health or safety of other occupants. The Tenant entered into that agreement on March 30, 2017 willingly and without undue influence. He confirmed that he appreciated the risk posed by F.M. when he entered into the agreement and further confirmed his understanding that the continuation of this tenancy depended on his commitment to keeping F.M. away from the building; in failing to do so, I find that this tenancy should end immediately. I also

find that it would be unreasonable or unfair to the Landlord to wait for a one month Notice to End Tenancy to take effect.

Therefore, I grant the Landlords' application to end this tenancy early.

Conclusion

The Landlord is granted an Order of Possession effective **immediately after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with 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: January 8, 2018

Residential Tenancy Branch