



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on January 22, 2018 (the "Application"). The Landlord applied for an order of possession and for recovery of the filing fee, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord attended the hearing in person and was assisted by N.H. The Tenant attended the hearing in person. The parties provided affirmed testimony.

The Tenant acknowledged receipt of the Application package. Further, both parties acknowledged receipt of the documentary evidence upon which they intended to rely. During the hearing, neither party raised an issue with respect to service or receipt of the above documents. Accordingly, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Jurisdiction

The Landlord argued that a tenancy agreement existed between the parties. A copy of the tenancy agreement, signed by the parties on September 1, 2013, was submitted into evidence. The Landlord also submitted a title search print, dated January 21, 2018, which indicated the Landlord is the registered owner of the rental property. Other than a mortgage, no other registered interests appear on the title search.

The Tenant claimed the parties entered into an agreement whereby the Tenant would purchase the rental property. In support, the Tenant submitted a Contract of Purchase and Sale (the “Purchase Contract”), signed by the parties on September 1, 2013. The Purchase Contract indicates that the completion date would be September 1, 2014. The Tenant testified that he has paid amounts in addition to the agreed upon rent, and has made improvements to the rental property. However, the Landlord testified that the Tenant was unable to obtain financing and the sale did not complete.

While the parties may have intended for the Tenant to purchase the property, I find there is insufficient evidence before me to conclude the Tenant has an ownership interest in the property. I am supported in this determination by the title search print, described above. As a result, I find that the evidence and submissions of the parties support the conclusion that the relationship between them is one of landlord and tenant. Accordingly, I find I have jurisdiction to hear this matter.

In addition, I note the Tenant has submitted an application for dispute resolution to the Residential Tenancy Branch. That matter is scheduled to be heard on March 29, 2018. The file number has been provided above for ease of reference.

Background and Evidence

A tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on September 1, 2013. At that time, rent in the amount of \$1,092.50 per month was due on the first day of each month. The Tenant paid a security deposit of \$650.00.

The Landlord wished to end the tenancy. She testified there are a number of reasons for wishing to do so. First, the Landlord stated the Tenant has caused damage to the rental property by adding an unauthorized secondary suite. According to the Landlord, the work was done without her authorization or appropriate permits, which has had a financial impact on her. In support of this assertion, the Landlord submitted three Bylaw Offence Notices which have been issued to her for the Tenant's failure to obtain the necessary permits. The Landlord also testified the Tenant has made an application to perform additional work on the rental property. This was not disputed by the Tenant. Indeed, the Tenant submitted with his documentary evidence a copy of a Building Permit Application, in his own name, with an estimated start date of April 15, 2018. The permit was submitted to convert the garage to a play room.

In reply, the Tenant did not dispute adding the secondary suite but maintained he has an ownership interest in the rental property entitling him to do so.

Second, the Landlord testified the Tenant has either constructed or permitted a marijuana grow operation to exist on the property. The Landlord submitted photographic evidence depicting the interior of the rental property. These images show walls sealed with heavy plastic sheeting, hand-written notations indicating "grow" and "bloom", improvised ventilation, and what appear to be marijuana plants. The Landlord testified the photographs were taken with the assistance of a police officer who attended the rental property with her.

The Landlord also relied on a letter she received from J.W., a city inspector. The letter, dated February 5, 2018, addressed the City's concerns which included the addition of a secondary suite, marijuana grow operation, and a children's play area. It states:

The City has been made aware that bylaw contraventions are taking place at [the rental property]...

On Friday, February 2, 2018, staff attended the property with you, the property tenants, as well as the RCMP...due to complaints forwarded to the City (please refer to letter dated January 22, 2018). Staff confirmed that construction has occurred for a secondary suite, a marijuana grow operation, and a childrens play area within the garage.

...

A review of the building permit history reveals that there have been no (0) building permits issued for a secondary suite, a marijuana grow operation, or a childrens play area. Further, staff have noted immediate life and safety concerns within the secondary suite and marijuana grow operation...As a result, staff have posted these works with No Occupancy...Further, these works were posted with a Health and Safety Notice...

[Reproduced as written.]

Further, the Landlord relied on an estimate from a contractor to remediate the renovations and marijuana grow operation in the amount of \$70,875.00.

In reply, the Tenant acknowledged there was an issue with marijuana being grown in the secondary suite occupied by his tenants, but that they have been evicted.

Third, the Landlord testified that the Tenant has been aggressive with her. She testified that she has asked police to attend the property with her – most recently on January 22 and February 2, 2018 – out of concern for her safety. The Landlord also testified that the Tenant has been aggressive with contractors she has asked to attend the rental property.

In reply, the Tenant acknowledged that he sometimes loses his temper but suggested the contractors were “thug-like” and told him to “get the fuck out” of the rental property.

The Landlord also sought to recover the filing fee paid to make the Application.

Analysis

Based on the documentary evidence and affirmed oral testimony, and on a balance of probabilities, I find:

Section 56 of the *Act* permits a landlord to end a tenancy on a date that is earlier that the tenancy would end if notice to end the tenancy were given under section 47 of the *Act*.

The circumstances which permit an arbitrator to grant an order of possession on these bases are enumerated in section 56(2) of the Act, which states:

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...

- (a) *The tenant or a person permitted on the residential property by the tenant had 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 landlords 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.*

[Reproduced as written.]

In this case, the Landlord's testimony, which I accept, was that the Tenant performed renovations at the rental property without the Landlord's authorization or the required permits. As indicated in the City letter, dated February 5, 2018, these renovations included construction of a secondary suite and a marijuana grow operation. Further, I accept that these renovations have had or will have a significant financial impact on the Landlord. Accordingly, I am satisfied that the Tenant, or a person permitted on the rental property by the Tenant, has put the Landlord's property at significant risk and has caused extraordinary damage to the residential property. Further, I find it would be unreasonable or unfair to the Landlord to wait for a notice to end the tenancy under section 47 of the *Act* to take effect.

Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application, which I order may be retained from the security deposit held by the Landlord.

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after it is served on the Tenant. The order may be filed in 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: March 1, 2018

Residential Tenancy Branch