



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER NATIVE HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord's Agents filed under *the Residential Tenancy Act*, (the "*Act*"), for an early end of tenancy pursuant to section 56 of the *Act* and an order to recover the cost of filing the application from the Tenant.

Three Agents for the Landlord (the Agents) attended the hearing. Each Agent was affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agents testified the Application for Dispute Resolution and Notice of Hearing had been posted to the Tenant door on April 25, 2018. The Agents provided photographic evidence of the notice attached to the Tenant door. Section 90 of the *Act* determines that a document served in this manner is deemed to have been served three days later. I find that the Tenant had been duly served in accordance with the *Act*.

The Agents were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

Issue(s) to be Decided

- Is the Landlord entitled to an early end of tenancy and an Order of Possession, under section 56 of the *Act*?
- Is the Landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The Agents testified that the tenancy began on June 15, 2015, as a month to month tenancy. Rent in the amount of \$510.00 is to be paid by the first day of each month and that the Tenant had paid a \$465.00 security deposit. The Agents testified that the rent for the rental unit is subsidized; however, the security deposit is based on the market rate for the rental unit. The Agents provided a copy of the tenancy agreement into evidence.

The Agents testified that they had received several noise complaints from neighbours regarding the Tenant having loud parties in the rental unit and that the Tenant and her guests were shouting, swearing, and threatening other occupants in the building. They also testified that they had issued multiple warning letters to the Tenant regarding her and her guest's behaviour. The Agents testified that they run a family building and that the Tenant's behaviour poses a threat and is a disturbance to the other occupants of the building.

The Agents testified and provided documentary evidence that on June 17, 2017 guests of the Tenant had stolen a fire extinguisher from the hallway. The Tenant had been served with a warning letter about this, requesting that she pay to cover the cost of replacing the fire extinguisher. The Agents testified that the Tenant paid the required amount to cover the cost of replacement.

The Agents testified and provided documentary evidence that on September 18, 2017, the Tenant notified them that the glass on her patio door had been broken. The Agents testified that they covered the cost of repairing the patio door; however, they believe that it was the Tenant who had caused the damage but were unable to prove it.

The Agents testified and provided documentary evidence that on October 13, 2017, guests of the Tenant had gotten into a fight in the hallway. This fight had caused a significant disturbance and left a trail of blood down the hall. The Agents testified that they issued another warning letter to the Tenant stating that if they received any further complaints, they would end her tenancy.

The Agents testified and provided a witness statements that there was another incident on March 15, 2018, which was "the last straw" and resulted in this application to end tenancy. The Agents testified, supported by a written complaint from a neighbour that there had a group of men shouting and fighting on the balcony of the Tenant's rental

unit at 01:00 am on March 15, 2018. The complaint letter noted that the noise coming from the Tenant's rental unit went on for several hours and that they had witnessed one of the men urinating off the balcony that evening. The Agents testified that they issued a written letter to the Tenant regarding this complaint, and notifying her that they would be ending her tenancy. A copy of that letter was submitted into documentary evidence.

It became evident during the testimony that the Agents had wanted to enforce a One Month notice during this hearing. I explained that this hearing was based on an application for an Early End of Tenancy (ET), under section 56 of the *Act*, and that this hearing could only deal with matters related to the ET. I also explained the ET application process and how these applications are given a priority hearing date. The Agents were informed that any request for an Order of Possession for Cause under section 47, of the *Act* would have to be dealt with in another hearing.

The Agent E.S. became very upset and stated that it was just a simple clerical error on their application, and that their intent when applying for this hearing had been to seek an Order of possession to enforce a notice they had issued. The Agent also stated that they had submitted a copy of the notice in their documentary evidence package, and demanded that their application be amended during this hearing to include their request to enforce the notice.

I advised the Agents that due to the Rules of Procedure, that would not be allowed and that there was no One Month Notice to End Tenancy for Cause (form #RTB-33) in their documentary evidence.

Agent E.S. testified that if this Arbitrator decided to dismiss this case due to a clerical error, that it was a mistake, and that she would be filing for review.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an Early End to Tenancy and 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, a landlord has the burden of proving that:

- There is sufficient cause to end the tenancy such as; unreasonably disturbed another occupant, seriously jeopardized the health, or safety, or a lawful right, or interest of the landlord, engaged in illegal activity, or put the landlord's property at significant risk; and
- That it would be unreasonable or unfair to the landlord or other occupants to wait for a one month notice to end tenancy for cause under section 47 of the *Act* to take effect.

In this case, while the Tenants conduct may have been disturbing to others, I find the circumstance of this case are not so significant or severe that it would have been unreasonable for the Agents to have to wait for a One Month Notice to take effect if there was sufficient cause to end the tenancy. Therefore, I find that the Agents for the Landlord did not satisfy me that this tenancy should end early under section 56 of the *Act*.

As for the Agent's Request that their application, be amended during this hearing to include a request for an Order of Possession under section 47 of the *Act*. The Rules of procedure classify an application for an early end of tenancy as an Urgent Application. As such, this type of application is it given priority in hearing scheduling times. For that reason, the Rules of Procedure have limited what matters can be heard in an Urgent Application. Section 2.5 of the Rules of Procedure state:

2.5 Urgent Application

Urgent applications may include applications under *Residential Tenancy Act* section 33, 54, 56.1 or 65

I find that it would be procedurally incorrect and unfair to the respondent, pursuant to the Rules of Procedure, to allow the Agent's request to attach a matter under section 47 of the *Act* to these proceedings.

Therefore, I dismiss the Landlord's application for an early end of tenancy under section 56 of the *Act*, as I find it neither unreasonable or unfair that the Landlord would need to wait for a One Month Notice to take effect and for the required hearing process under that notice.

As I have dismissed the Landlord's application, the Landlord is not entitled to recover the filing fee.

Conclusion

I dismiss the Landlord's application for an early end of tenancy and to recover her application fee. This tenancy continues until ended in accordance with the *Act*.

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: May 22, 2018

Residential Tenancy Branch