



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 the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:08 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.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. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord provided sworn testimony supported by written evidence that the dispute resolution hearing package and written evidence package were sent to the tenant by registered mail on May 23, 2018. The landlord provided a copy of a Canada Post Tracking Number and Customer Receipt to demonstrate this registered mailing to the tenant. The landlord's spouse testified that the Canada Post Online Tracking system revealed that the tenant received delivery of this material on May 24, 2018. Based on the landlord's undisputed evidence and in accordance with sections 88, 89(2) and 90 of the *Act*, I find that the tenant was deemed served with these documents on May 28, 2018, five days after their registered mailing.

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

The landlord and his spouse testified that the tenant was apparently allowed to live in the lower suite of this two unit residential home by the landlord's late mother. Although the landlord was not aware of any written tenancy agreement, they believe that the tenant did pay some monthly rent to their late mother before she passed away in November 2017. The landlord believes that the tenant was also to be held responsible for the payment of the utilities for this portion of the house. The landlord and his spouse said that the tenant has not paid any rent to them.

In December 2017, after inheriting sole possession of the premises from their mother, the landlord commenced attempts to end the tenancy of those living in both portions of this rental home. While they issued a complete 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to those in possession of the upper floor of this home on December 26, 2017, the 10 Day Notice they posted on the lower level did not identify a tenant name because the landlord did not know his name at that time. The landlord has not issued any other Notice to End Tenancy to the tenant, identifying him by his name. The landlord also entered into written evidence a copy of a handwritten note from the tenant in which he committed to vacate the rental unit by February 15, 2018.

The landlord has subsequently obtained a 2 Day Order of Possession as per the December 2017 10 Day Notice issued to the tenants in the upper level of this home. The landlord and his spouse said that the upper floor tenants and the tenant routinely mix between the two levels of this property and are both responsible for problems that will require major repairs to this home.

The landlord provided a number of documents issued by the municipality to support their claim that the clutter and mess on this property have led to a number of bills being issued to the landlord for cleanup of the premises due to bylaw contraventions. The landlord's spouse noted that there are old bicycles and bicycle parts strewn all around the rental unit, and that the premises constitute a serious health risk, as there are insect and rat infestations. The landlord's spouse said that the last time she was able to look inside the door of the rental unit with police escort it was apparent that the rental unit was so dirty that the gyproc would likely have to be removed in order to undertake repairs. The landlord's spouse said that the tenant will not allow her on the premises.

Both the landlord and the landlord's spouse said that they are concerned about their safety due to the tenant's behaviour. They said that visitors and guests on the property also increase the health and safety risk. The landlord said that one of his vehicles on the property has been stolen and efforts were being made online to sell it. They noted that the tenant has not paid any rent or utilities and they can only attend the property when they can obtain assistance from the police to do so.

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.

Although the usual process for obtaining an end to a tenancy of this type would be through issuing a 10 Day Notice or a 1 Month Notice to End Tenancy for Cause (a 1 Month Notice) pursuant to section 47 of the *Act*, the only Notice to End Tenancy that the landlord has issued was one that failed to identify the tenant's name. Based on the landlord's and the landlord's spouse's undisputed sworn testimony, I have little doubt that the landlord has sufficient grounds to end this tenancy for a number of the reasons

cited in the first part of section 56 of the *Act* as noted above. the primary question narrows to whether the landlord has met the burden of proof established in the second portion of section 56, in which the landlord must demonstrate that it would be unreasonable or unfair to the landlord to have to wait for a 1 Month Notice to take effect.

In considering this matter, I take into consider that the tenant has continued living in this rental unit many months since the landlord's mother passed away in November 2017. Many months have also passed since the landlord's first attempt to serve a 10 Day Notice to obtain possession of this rental suite in December 2017. Based on the tenant's February 15, 2018, the landlord reasonably expected that the tenant was going to vacate the rental unit without the landlord's reliance on the issuance of notices to end tenancy and, if necessary, an application for dispute resolution. However, four months later the tenant still has shown no indication of vacating the rental unit. The landlord's failure to issue a proper Notice to End Tenancy during this period calls into question the extent to which it would be unreasonable or unfair to require the landlord to wait the extra time required to obtain an end to this tenancy on the basis of a 1 Month Notice. Plainly put, what, if anything, has changed that would make it unreasonable or unfair to wait an extra month or two?

In assessing this matter, I also take into consideration the undisputed sworn testimony and written evidence from the landlord as to what would appear to have been a significant deterioration in the condition of the rental property, and in the landlord's ability to exercise his rights, responsibilities and duties as a landlord with respect to his interest in this rental property. In this regard, the landlord has provided written evidence from the municipality to support the landlord's claim that the lack of maintenance to this property has escalated to the level where it is causing a health and safety risk, requiring formal action by the municipality. The landlord has become responsible for cleanup costs, which the landlord and his spouse maintained have only been partially successful in that the rental unit is a source of a continuing rodent and insect infestation and presents a health and safety risk. The tenant's actions in deterring the landlord or his spouse from accessing the rental premises without police escort raises considerably more concerns as to the extent to which the landlord's rights and investment can be safeguarded under these circumstances. The landlord's undisputed sworn testimony that one of his vehicles has been stolen and offered for sale online demonstrates the extent to which the situation has escalated over the past several months. Under these circumstances and on a balance of probabilities, I find that the landlord has provided sufficient undisputed sworn testimony and written evidence to substantiate their claim that it would be unfair or unreasonable to expect them to have to wait for a 1 Month Notice to take effect. I find that they have supplied convincing and undisputed

evidence with respect to their need to attend the premises only with police assistance, their concerns about health and safety arising out of the lack of care and maintenance being provided by the tenant, and the extent to which the tenant's actions are damaging the property and putting the landlord's investment at significant risk. For these reasons, I allow the landlord's application to end this tenancy early in accordance with section 56 of the *Act*. I issue a 2 Day Order of Possession in the landlord's favour.

As the landlord has been successful in this application, I allow the landlord's application to recover the \$100.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the amount of \$100.00 in order to allow the landlord to recover the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: June 21, 2018

Residential Tenancy Branch