



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

On September 10, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting an early termination of tenancy and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The parties attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before 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.

Issues to be Decided

Should an Order of Possession be granted, in accordance with Section 56 of the Act?

Should the Landlord be compensated for the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Landlord and the Tenant agreed on the following terms of the tenancy:

The month-to-month tenancy began on August 1, 2011, and the current monthly rent is \$360.00 (+ \$40.00 for cable). The Tenant paid a security deposit of \$160.00.

Landlord YB testified that there have been ongoing issues with the Tenant regarding the condition of his rental unit. The Landlord referred to a letter, dated February 1, 2016, where the Landlord acknowledged that the Tenant caused a fire after knocking over an ashtray onto the floor. Included in the letter was a warning to the Tenant that the amount of drinking, smoking and lack of cleaning was potentially putting the safety of the residents at risk and could also jeopardize the Tenant's tenancy.

In a letter dated May 16, 2016, the Landlord YB advised the Tenant that another inspection would occur in his rental unit to ensure it has been maintained in a safe and healthy condition. The Landlord stated that the Tenant had been making progress and there would need to be regular cleaning to maintain a safe standard.

In December of 2017, another inspection occurred in the Tenant's rental unit and the Landlord again sent a warning letter for the Tenant to clean his unit to meet acceptable standards.

On September 10, 2018, the Building Caretakers entered the Tenant's rental unit to address a leak from the above unit. The Caretakers noted that the condition of the unit was "terrible" with "rotting food, flies, cigarettes burned out on floor, black bed, empty beer cans, used ashtrays, grease covered stove top, poop covered toilet." Landlord YB stated that the rental unit was uninhabitable and felt like she could not let the caretakers attend to the rental unit to complete the necessary repairs.

Landlord YB provided pictures of the unit and stated that the condition is worse than ever; however, her biggest concern is that it appeared that the Tenant was using the carpet to butt out his cigarettes. Landlord YB submitted a picture of the carpet beside the Tenant's bed that showed garbage, food, beer can tabs and cigarette butts ground into the carpet. Caretaker MD stated that he had a close look at the carpet and could see burn marks and believed that the cigarettes had been butted out on the carpet.

The Landlord requested an Order of Possession for the rental unit as the situation had worsened and she believed that the Tenant's excessive drinking and use of cigarettes had created an urgent situation that required an early termination of the tenancy. The Landlord acknowledged that the Tenant now had an advocate and was receiving

support and stated that if an Order of Possession was issued, that the Landlord would consent to a move-out date at month's end.

The Tenant testified that he did not butt out his cigarettes on the carpet. He stated that he recently hired someone to assist him in cleaning his rental unit clean.

The Tenant's Advocate stated that there had not been any issues with fire or smoke since the one issue in 2016. The Advocate did not agree with the Application for an early termination of the tenancy as there was no immediate risk.

The Tenant, other than his testimony, did not submit any evidence for this hearing.

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 accept the Landlord's evidence that the condition of the rental unit is such that it would be extremely difficult to conduct the maintenance (fixing the leak) necessary to protect the Landlord's property from significant damage. Furthermore, I find that the Landlord has provided sufficient evidence to prove that the Tenant's actions of either accidentally or intentionally placing lit cigarettes onto the carpet, right beside his mattress, could seriously jeopardize the health and safety of other occupants and furthermore, puts the Landlord's property at significant risk of catching fire.

As outlined above, there are clearly two separate components to section 56 of the Act, both of which need to be met in order for the Landlord to obtain an early end to a tenancy. The second component requires that the Landlord demonstrate that it would be unreasonable or unfair to wait for consideration of a standard Notice to End Tenancy for Cause to be considered.

In this case, the Landlord, over the last couple of years, has been dealing with the condition of the Tenant's rental unit, where it has potentially reached a health and safety issue and caused permanent damage to the rental unit. If this were the only issue, I would recommend that the Landlord pursue a One Month Notice to End Tenancy for Cause. However, I accept the Landlord's view that the situation has worsened and that the Tenant has been negligent with lit cigarettes and therefore, has heightened the risk of significant damage and jeopardizing the health and safety of other occupants. Section 56 of the Act is reserved for situations where a Tenant's actions have escalated to the extent that the delay involved in issuing a One Month Notice for Cause and waiting for that Notice to take effect would be unreasonable or unfair. After reviewing the testimony and evidence, I find that the Landlord should receive an Order of Possession for the rental unit and that the tenancy will end, pursuant to Section 56 of the Act.

Although the Landlord has successfully argued that the Tenant presents a significant risk, the Landlord also acknowledged that the Tenant is receiving some support; therefore, have consented to extending the Order of Possession until October 31, 2018, so the Tenant has an opportunity to find alternate housing.

The Landlord's Application has merit and the Landlord should be compensated for the cost of the filing fee. I authorize the Landlord to retain \$100.00 from the Tenant's security deposit.

Conclusion

Pursuant to Section 56 of the Act, I am granting the Landlord an Order of Possession to be effective on October 31, 2018, at 1:00 p.m. This Order should be served on the Tenant as soon as possible. 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.

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: October 15, 2018

Residential Tenancy Branch