



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") for an order to end the tenancy early and receive an order of possession, and to recover the cost of the filing fee.

The landlords attended the teleconference hearing which began promptly at 9:30 a.m. Pacific Time on Friday, November 16, 2018. The landlords 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 hearing lasted 44 minutes.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The landlords provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on October 19, 2018 and was signed for and accepted by the tenant on October 23, 2018. The registered mail tracking number has been included on the cover page of this decision for ease of reference. The online registered mail tracking website information supports the landlords' testimony that the registered mail package was signed for and accepted on October 23, 2018. Therefore, I find the tenant was served as of October 23, 2018 which was the date the registered mail package was signed for and accepted.

As I find the tenant was sufficiently served in accordance with the *Act*, and did not attend this hearing, I find this application to be undisputed by the tenant.

Preliminary and Procedural Matter

The landlords confirmed their email address at the outset of the hearing. The landlords confirmed their understanding that the decision would be emailed to the landlords and sent by regular mail to the tenant as an email address for the tenant was not included in the application before me. In addition, the landlords were advised that any applicable orders would be sent to the appropriate party.

Issues to be Decided

- Are the landlords entitled to end the tenancy early and obtain an order of possession?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence by the landlord. A fixed-term tenancy began on February 1, 2018 and reverted to a month to month tenancy after July 31, 2018. Monthly rent of \$1,085.00 is due on the first day of each month. The tenant paid a security deposit of \$500.00 at the start of the tenancy which the landlords continue to hold. The tenant continues to occupy the rental unit.

During the hearing, the landlords testified that on September 17, 2018 the landlords provided a written notice to the tenant by registered mail that they would be attending the rental unit on October 2, 2018 between 7:00 p.m. and 8:00 p.m. to inspect the rental unit. The landlords stated that one of the reasons for the inspection was due to significant damage to the rental unit flooring of which photographic evidence was submitted in evidence and a document which lists over \$38,000.00 to repair damaged flooring. The landlords stated that on October 2, 2018 shortly after 7:00 p.m. they attended the rental unit and knocked on the door and nobody answered even though they could see someone in the rental unit. After nobody answered, the landlords stated that they used their rental unit key to attempt entry to conduct the inspection and the key did not work as the rental unit locks had been changed without permission of the landlords.

The landlords testified that they are extremely concerned about their rental unit and the fact that the tenant has changed the locks without permission and that if something should happen such as a fire, flood or other emergency, they no longer have means to

access the rental unit. As result, the landlords are seeking to end the tenancy early based on the tenants causing significant damage and changing the locks to prevent a lawful inspection under the *Act*.

The landlords confirmed that money for use and occupancy was paid for November 2018 by the tenant.

Analysis

Based on the foregoing, the landlords' undisputed documentary evidence and testimony, and on a balance of probabilities, I find the following.

Section 56 of the *Act* applies and states:

Application for order ending tenancy early

56 (1) A landlord may make an application for dispute resolution to request an order

- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and
- (b) granting the landlord an order of possession in respect of the rental unit.

(2) 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, in the case of a landlord's application,

(a) the tenant or a person permitted on the residential property by the tenant has 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 landlord's 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.

[My emphasis added]

Based on the undisputed evidence before me, I accept that the tenant denied a lawful request to inspect the rental unit as claimed by the landlords and changed the rental unit locks without permission which provides no means of access to the rental unit in case of an emergency which I find puts the landlord's property at significant risk. I also accept the undisputed testimony that the tenant has caused extraordinary damage to the rental unit based on a flooring repair document of over \$38,000.00 submitted for my consideration. I am also satisfied that it would be unreasonable and unfair to the landlord or the other occupants to wait for a notice to end tenancy under section 47 of the *Act*.

I find the tenant breached section 31(3) of the *Act* which states:

Prohibitions on changes to locks and other access

31 (3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

[My emphasis added]

In addition, as the tenant was served with the Notice of Hearing, application and documentary evidence, I find this application to be unopposed by the tenant. Therefore, pursuant to section 56 of the *Act*, I grant the landlord an order of possession for the rental unit effective **November 30, 2018 at 1:00 p.m.** as money for use and occupancy was paid for November 2018. I do not make any findings on the alleged flooring damage as there was no claim for damages before me.

As the landlords' application was successful, I grant the landlords the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*. Pursuant to section 67 and 72 of the *Act*, I authorize the landlords to retain **\$100.00** from the tenant's \$500.00 security deposit in full satisfaction of the landlords' recovery

of the cost of the filing fee. I find that the tenant's security deposit is reduced from \$500.00 to \$400.00 as a result effective immediately.

Conclusion

The landlords' application is successful.

The tenant ends on November 30, 2018 at 1:00 p.m.

The landlords have been granted an order of possession for the rental unit effective November 30, 2018 at 1:00 p.m. This order must be served on the tenant and may be enforced through the Supreme Court of British Columbia.

The landlords have been authorized to retain \$100.00 from the tenant's security deposit in full satisfaction of the landlords' recovery of the cost of the filing fee. I find that the tenant's security deposit is now \$400.00 as a result.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*. Pursuant to section 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*.

Dated: November 16, 2018

Residential Tenancy Branch