



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD
and [tenant name suppressed to protect privacy]

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.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent JN (the "landlord"). The General Manager EM joined the hearing about 20 minutes after the start of the hearing.

As both parties were present service of documents was confirmed. While the tenant raised some complaints about how the landlord's application for dispute resolution and evidence were served, they confirmed receipt of the materials. The landlord confirmed receipt of the tenant's evidence. Based on the testimonies of the parties I find that the respective materials were served in accordance with sections 88 and 89 of the *Act*.

Issue(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

There was an earlier hearing regarding this tenancy under the file number on the first page of this decision. That hearing dealt with a 1 Month Notice to End Tenancy for Cause. A copy of the 1 Month Notice dated October 18, 2018 was submitted into evidence. The 1 Month Notice submitted into evidence states the following as the reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - Seriously jeopardized the health or safety of lawful right of another occupant or the landlord
 - Put the landlord's property at significant risk
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - Damage the landlord's property
- Tenant has not done required repairs of damage to the unit

The 1 Month Notice was cancelled and found to be of no force or effect by the Arbitrator at the earlier hearing.

The landlord testified that the present application for an early end of the tenancy arises from the same factual basis as the 1 Month Notice. The landlord testified that the rental unit is not safe due to the messy conditions. The landlord called their Health and Safety Manager as a witness and they provided testimony that the tenant's rental unit poses a risk to health and safety of anyone who enters the suite. The witness testified that the lack of proper housekeeping and the tenant's lifestyle has caused the suite to pose a risk to health of occupants and neighbors.

The landlord testified that recently, after filing their application for dispute resolution, on December 5, 2018 the tenant left a cosmetic bag containing used hypodermic needles in the resident manager's mail slot. The landlord said that they are pursuing police action for this incident. The landlord testified that they believe the tenant's intention was to cause the resident manager to stab herself on a used hypodermic.

The tenant testified that the condition of the rental unit is no cause of concern for the landlord. The tenant said that while the suite is cluttered it is not unclean. The tenant testified that while he left the cosmetic bag of hypodermics in the resident manager's mail slot, he did not create the bag but merely found it on the rental property.

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.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

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 find that the landlord has not shown, on a balance of probabilities, that it would be unreasonable or unfair to the landlord or other occupants to wait for a notice to end tenancy to take effect. While the landlord has testified about the condition of the rental suite I find there is little evidence that there is a risk to the health or safety of other occupants who do not enter the suite. The written submission of the Health and Safety Manager mentions that the bugs in the rental suite "pose a risk to neighbouring units" but I find there is insufficient evidence that the bugs are a serious jeopardy.

As regards the incident of a cosmetic bag containing hypodermics being left in the mail slot of the manager, based on the testimonies I find that this was an isolated incident. I do not find the landlord's conclusion that this was a knowing and malicious attack to be supported in the evidence. There are inherent risks to health with handling and disposing of hypodermics. While the tenant's act of leaving the cosmetic bag with the manager without noting its contents may not have been the most appropriate manner of disposing of hypodermics I do not find that it was a serious jeopardy to health and safety.

I find that in any event the landlord has not shown that it would be unreasonable or unfair to wait until a notice to end tenancy pursuant to section 47 of the Act could take

effect. Even if there are issues with the condition of the rental suite I find that there is insufficient evidence that it is unreasonable or unfair for this tenancy to continue until a 1 Month Notice takes effect. I find that the evidence, including testimony of the landlord and documents submitted, supports the tenant's position that the condition of the rental suite is confined to the unit. The landlord's evidence consists of a brief mention that bugs could pose a risk to neighbors and conjecture that if the tenant engages in dangerous activities in the rental unit then there is a possibility that emergency services would not be able to intervene.

I find there is insufficient evidence to conclude that the tenant poses a risk to the landlord's property such that it would be unreasonable to wait until a notice to end tenancy pursuant to section 47 of the Act could take effect.

Conclusion

The landlord's application is dismissed without leave to reapply.

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: December 7, 2018

Residential Tenancy Branch