



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 for Dispute Resolution seeking an order of possession.

The hearing was conducted via teleconference and was attended by the landlord's agent.

The landlord testified each tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally on November 29, 2019 in accordance with Section 89 and that this service was witnessed by a third party.

Based on the testimony of the landlord, I find that each tenant has been sufficiently served with the documents pursuant to the *Act*.

The hearing was originally scheduled for 9:30 a.m. on December 21, 2018, however, due to administrative issues on the day of the hearing it had to be rescheduled to 11:00 a.m. The landlord's agent attended the hearing at 9:30 and was provided with the new time and access information to call into the new hearing time at 11:00 a.m.

Staff from the Residential Tenancy Branch remained on the 9:30 a.m. call until 9:40 a.m. by which time the tenants had not called in. Usual practice by the Residential Tenancy Branch is to begin the hearing at the 10-minute mark of after the scheduled hearing time. As the tenants did not attend by 9:40 a.m. the original called was ended.

Residential Tenancy Branch Rule of Procedures 7.1 states the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As I have found above that each tenant has been sufficiently served with Notice of this hearing, I find that the change in time and access information was available to the

tenants, had they attended the original hearing time. I acknowledge the tenants failed to attend the original hearing with in the required time and the hearing, had it been conducted at 9:30 would have still proceeded in their absence.

I note the landlord had provided some evidence in the form of the written statements from the neighbours however, the landlord had redacted their names from the copies of the statements sent to the tenants. I advised the landlord during the hearing that since the evidence provided to the tenants was not the same.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession to end the tenancy early and without notice and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 56, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on July 20, 2018 for a month to month tenancy beginning on July 25, 2018 for a monthly rent of \$950.00 due on the 1st of each month with a security deposit of \$475.00 paid.

The landlord testified on November 21, 2018 the occupants of a neighbouring rental unit on the same residential property contact the landlord to advised that they had heard disturbing noises next door in the subject rental unit and that shortly after a piece of metal had appeared in their home through the common wall between the units.

The landlord investigated and found that it appeared to be a bullet. Police were called, and a file was opened. No further information was available in regard to the police investigation. The landlord indicated that earlier in the day the landlord's plumber had completed some work on the property.

The landlord submitted that they had received complaints in the past that the tenants may have been selling drugs out of the unit and that there were often people coming and going from the property, including through a hole in the backyard fence that the tenants had created.

In support of their Application the landlord has provided photographic evidence and oral testimony.

Analysis

Section 56(1) of the *Act* allows a landlord to may make an application for dispute resolution to request an order 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

Section 56(2) states that I may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession 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.

I am satisfied from the landlord's undisputed testimony and photographic evidence and on a balance of probabilities that the tenants and/or their guests caused a firearm to discharge in the rental unit. I further find that this discharge resulted in a bullet penetrating the common wall between rental units endangering the safety of the occupants.

As a result, I am satisfied the landlord has provided sufficient evidence to establish cause to end the tenancy on the ground that the tenants have seriously jeopardized the health and safety of other occupants.

I am also satisfied that due to the nature of this endangerment it would be unreasonable for the other occupants in the residential property to wait until a One Month Notice to End Tenancy for Cause issued under Section 47 to take effect.

Conclusion

Based on the above, I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$100.00** comprised of the fee paid by the landlord for this application.

I order the landlord may deduct this amount from the security deposit held in the amount of \$475.00 in satisfaction of this claim. I note that this leaves a balance of \$375.00 as a security deposit that must be dispersed in accordance with the landlord's obligations under the *Act* at the end of the tenancy.

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 21, 2018

Residential Tenancy Branch