



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on November 11, 2018, a Canada post tracking number was provided as evidence of service. The Canada post history shows the package was unclaimed by the tenant. Refusal or neglect to pick up the packages does not override the deemed service of the Act.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

Issue to be Decided

Is the landlord entitled to an order of possession to end the tenancy early?

Background and Evidence

The tenancy began May 2017. Rent in the amount of \$1,400.00 was payable on the first of each month. A security deposit of \$700.00 was paid by the tenant.

The landlord testified that the tenant is creating a lot of problems by significantly interfering and unreasonably disturbing the other occupant.

The landlord testified that on October 26, 2018, the tenant smashed a hole in the adjoining door to the other rental unit because they do not like the other occupant. Filed in evidence is photograph of the door with a large hole.

The landlord testified that the tenant's behaviour is erratic as the tenant bangs on the walls causing unreasonable disturbance to the other occupant.

The landlord testified that they went to the rental unit to resolve the problem and they discovered that the tenant had used a hammer causing significant damage to one of the walls in the rental unit and other holes in the walls. The landlord stated that the tenant told them that they get frustrated and that is how they get their frustration out. Filed in evidence are photographs of the walls.

The landlord testified that the tenant has also written all over the walls, which the tenant told them that they do this, so they do not forget things. Filed in evidence is a photograph of the walls.

The landlord testified that when they also served the tenant with a One Month Notice to End Tenancy for Cause, in person, on October 29, 2018. The landlord stated that the tenant did not dispute the One Month Notice and were required to vacate the premises by November 30, 2018.

The landlord testified that the tenant also failed to pay rent for November 2018, and they served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on November 2, 2018. The landlord stated that the tenant did not pay the rent, and has not paid Decembers 2018.

Analysis

Section 56 of the *Act* allows a landlord to request an order of possession to end the tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under Section 47 (1 Month Notice to End Tenancy for Cause) if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has

- 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, or
 - 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 rental unit or residential property;
- b) And 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 to take effect.

I am satisfied, based on the undisputed testimony and evidence provided by the landlord that the tenant has significantly interfered with and unreasonable disturbed another occupant.

I am further satisfied based on the undisputed testimony and evidence that the tenant has caused damage to the landlord's property and puts the property at significant risk.

I also find the landlord has established, by their undisputed testimony, that the tenant's behaviour erratic and as a result it would be unfair to the landlord and the other occupants of the rental unit to wait for a notice to end under section 47 to take effect.

Furthermore, the tenant was served with a One Month Notice for Cause and a 10 Day Notice for Unpaid Rent, both notices to end tenancy were not dispute and the effective day as passed.

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails 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. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Since the landlord was successful with their application, I authorize the landlord to retain the amount of \$100.00 from the tenant's security deposit in full satisfaction of this award.

Conclusion

I find the landlord is entitled to an order of possession. The landlord is authorized to retain the cost of the file fee from the tenant's security deposit, in full satisfaction of this award.

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 13, 2018

Residential Tenancy Branch