



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This decision pertains to the landlord's application for dispute resolution made on November 14, 2018, under the *Residential Tenancy Act* (the "Act"). The landlord seeks 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 ("order for early termination of tenancy") and an order of possession, all of which is pursuant to section 56 of the Act.

The particulars of the landlord's application state that "On Nov 14, 2018 I attended the outside of my townhouse rental property, I could hear the fire alarm faintly beeping from outside. I also observed more flies on the wall inside the unit, when I previously observed less on Oct 22, 2018 when I did a monthly inspection. During the previous inspection I noticed open garbage bags, molding cups/containers (with bugs inside), cardboard boxes over baseboard heaters. I believe the tenant has not cleaned, thus causing a fire hazard and biohazard."

A dispute resolution hearing was convened on December 13, 2018 and the landlord attended the hearing before me and was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The landlord confirmed that he served the tenant with the Notice of Dispute Resolution Proceeding package by way of registered mail on November 20, 2018. The package was never picked up by the tenant. Based on the oral and documentary evidence of the landlord, the documentary evidence of which included a photograph of the package and the Canada Post registered mail tracking number, I am satisfied that the landlord served the tenant pursuant to section 89(2)(b).

Issues

1. Is the landlord entitled to an order for early termination of tenancy?
2. Is the landlord entitled to an order of possession in respect of the rental unit?

Background and Evidence

The landlord confirmed and testified that the tenancy commenced on July 1, 2017 and was initially for a one-year term and for which the tenant paid the entire year's worth of rent in advance. A security deposit of \$1,000.00 was paid by the tenant. From July 1, 2018, to present, monthly rent is \$2,000.00, of which the tenant has paid very little. (I advised the landlord that he would need to pursue a separate application if he sought compensation for the unpaid rent.)

A copy of the written tenancy agreement was submitted into evidence.

The landlord testified that he conducted a walk-through inspection of the rental unit, after giving proper notice under the Act, on October 22, 2018 and observed multiple moldy cups with moldy liquid therein, a jug of moldy liquid, multiple moldy food in containers in the refrigerator, and garbage strewn about the rental unit.

In addition, the landlord discovered a large piece of cardboard leaning against the wall and immediately above and next to a baseboard heater. He also found a medium-sized piece of styrofoam left across the top of the range. Multiple smoke detectors were faintly beeping, which required fresh batteries. In support of his application the landlord submitted nine colour photographs the condition of the rental unit as described in his testimony.

In his submissions he argued that he is concerned about the health and safety of the rental unit's neighbours (the rental unit is adjacent to seven other townhouses) primarily for the reasons of the large cardboard resting against a base heater and the styrofoam atop the range. And, that he is also highly concerned about his property and that it has been, and is, at significant risk.

The parties have had very little communication and the tenant appears to be out of province for weeks on end, with a neighbour not seeing the tenant in months. He appears to have a second residence in Boston, Massachusetts.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this case, the landlord's claim is for an order for early termination of tenancy and an order of possession.

Section 56(1) of the Act permits a landlord to 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, and (b) granting the landlord an order of possession in respect of the rental unit.

In order for me to grant an order of possession under section 56(1), I must be satisfied that the landlord has proven on a balance of probabilities that sections 56(1)(a) and 56(1)(b) exist and have been met, as follows:

- (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.

In this case, the tenant appears to be an absentee tenant, returning only sporadically to the rental unit to consume large quantities of Schweppes ginger ale and to leave garbage strewn about. What is concerning is not necessarily the multiple moldy cups and food containers—the landlord did not provide evidence of an actual biohazard as stated in his application for dispute resolution. However, the tenant has, by leaving a very large piece of carboard (the type of carboard one might procure after receiving furniture) leaning against an electric base heater, and by leaving a styrofoam container across the top of the oven range, both seriously jeopardized the health and safety of the occupants of the seven other townhouse units, and, put the landlord's property at significant risk of burning to the ground.

Taking into consideration the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his claim for ending the tenancy early pursuant to section 56(1) of the Act. Further, pursuant to section 56(1)(b) of the Act, I grant the landlord an order of possession of the rental unit.

Further, I grant the landlord a monetary award of \$100.00 for recovery of the filing fee. I order that the landlord may retain \$100.00 from the tenant's security deposit in full satisfaction of this award.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenant and is effective two days from the date of service. This order may be filed in, 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 Act.

Dated: December 13, 2018

Residential Tenancy Branch