



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FF

Introduction

This hearing dealt with the landlords' 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, pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:46 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlords gave sworn testimony that they utilized the services of a process server in order to serve the application package to the tenant at the rental address through the tenant's sister. The landlords provided documentary proof of service in their evidentiary materials. I find the tenant duly served with the landlords' application and evidence in accordance with section 89 of the Act.

Issues(s) to be Decided

Are the landlords entitled to an early end to this tenancy and an Order of Possession.

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This fixed-term tenancy began on December 1, 2018, with monthly rent set at \$2,000.00, payable in advance on the first of each month. The landlords testified that the tenant was allowed to move in early on November 25, 2018. The landlords collected a security deposit of \$1,000.00, which they still hold.

The landlords are seeking an early end to this tenancy as the tenant continues to reside at the home.

Although the landlords have not issued any 1 Month Notice to End Tenancy for Cause (a 1 Month Notice), many of the behaviours and actions of the tenant may have given the landlords a reason to do so.

The landlords entered into written evidence and sworn testimony a number of reasons why they were seeking an immediate end to this tenancy. The landlords gave undisputed, sworn testimony that on December 11, 2018 the landlords, who were in another province, received notification that their tenant was arrested by the police. The landlords then received a phone call directly from the police confirming that their tenant was in fact in police custody.

The landlords testified that the tenant was charged with several offences related to this incident, including assaulting the attending police officer, and mischief to the landlords' property. As a result of this incident the landlords suffered extensive damage to their rental home and property, which is currently part of an open insurance claim. The landlord testified that the insurance adjuster is waiting for the unit to be vacant to provide an estimate to repair the damages due to safety concerns.

The landlords testified that their rental unit was significantly damaged after this incident, which took place within the first month of this tenancy. The damage included dog feces on the carpet, holes in the home, and the destruction of the bannister.

The landlords testified that due to the violent nature of the incident, and the extensive damage done to the property, they are seeking an early end to this tenancy. The landlords provided statements, photos, and other documentary evidence in their application to support their application.

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. 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.

The landlords have not issued any 1 Month Notice for Cause pursuant to section 47 of the Act.

Based on the undisputed written evidence and sworn testimony of the landlords and their witnesses, I find that sufficient evidence has been provided to warrant an end to this tenancy for several of the reasons outlined in section 56, as outlined above. I find that the tenant has significantly interfered with or unreasonably disturbed other occupants in this multi-residential building, and has caused extraordinary damage to the landlords' property. There is also sufficient evidence to demonstrate that the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlords.

The second test to be met in order for a landlords to obtain an early end to tenancy pursuant to section 56 of the Act requires that a landlord demonstrate that "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" for cause to take effect. On this point, I find that many of the reasons cited by the landlords for circumventing the standard process for ending a tenancy for cause meet the test required to end this tenancy early.

The severity of the damage caused by the tenant in such a short period of time during this tenancy, combined with the serious and violent nature of the offences that took place during this one incident are quite worrisome. Although it would have been preferable to have some of the witnesses in attendance at the hearing to provide direct sworn testimony, I also note that the tenant has not chosen to appear at this hearing, nor has he provided any contrasting accounts by way of written evidence. I find that the landlords have provided sufficient evidence to support that the behaviour from the tenant that has caused other residents in this building, as well as the landlords themselves, to become frightened and worried about their safety, which also impacts their right to quiet enjoyment of their residences. Of particular concern is the assault against the peace officer when attending the residence, which highlights the potential volatility that the landlords may face if this tenancy continues, and the potential for further violence and damage to their property.

The landlords are also facing a sense of urgency for the vacant possession of the rental unit as they are unable to proceed with repairs to their property caused by the tenant as the insurance adjuster cannot and will not proceed until the tenant moves out. Under these circumstances, I find that it would be unreasonable and unfair to other tenants in the building and the landlords to wait for a 1 Month Notice to End Tenancy for Cause to take effect. For these reasons, I find that the landlords have provided sufficient undisputed evidence to warrant ending this tenancy early. I issue a two day Order of Possession to the landlords.

As the landlords have been successful in this application, I allow the landlords' application to recover the \$100.00 filing fee from the tenant. Using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain this \$100.00 from the security deposit.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlords to recover the \$100.00 filing fee by allowing the landlords to retain \$100.00 from the security deposit for this 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: January 3, 2019

Residential Tenancy Branch