



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An early end to the tenancy and an order of possession - Section 56; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirms that the Tenant’s email as set out in the Landlord’s application is correct.

Preliminary Matter

The Tenant states that it did not receive the Landlord’s application for dispute resolution and only heard about this hearing when the Tenant called into the Residential Tenancy Branch three or four days prior to this hearing about making its own application. The Tenant states that no notice of registered mail was found in the Tenant’s mail. The Landlord states that the Tenant was served with the application for dispute resolution, the notice of this hearing and all the Landlord’s evidence (the “Materials”) by registered mail on July 7, 2019. The Landlord states that the postal tracking notes that the notice card for collection of the Materials were left in the Tenant’s mail on July 9, 2019 and as of the date of this hearing are noted to still being held for the Tenant at the postal pick up location. The Landlord provided the tracking numbers for this service. The Landlord states that the Tenant sent the Landlord an email on July 12, 2019 that they had to stay in the unit for the hearing.

Section 89 of the Act allows an application for dispute resolution to be served by registered mail. Section 90 of the Act provides that a document given or served in accordance with section 89, unless earlier received, is deemed to be received, if given or served by mail, on the 5th day after it is mailed. Given the Landlord's postal evidence I find that the Landlord served the Tenant as required and that the Tenant was given a notice of where to collect the Materials. Given the Tenant's evidence that no notice was received in the mail indicates that the Tenant has been collecting its mail. As a result of the Landlord's postal evidence I find on a balance of probabilities that the Tenant was given the notice to collect the Materials. I find therefore that the Tenant was served with the application for dispute resolution as required under the Act and the Tenant's failure to collect the Materials was at the Tenant's own peril.

Issue(s) to be Decided

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

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on August 4, 2018. Rent of \$1,600.00 is payable on the first day of each month. On April 13, 2019 the Parties signed a mutual agreement to end the tenancy for June 30, 2019.

The Landlord states that although the Landlord could have applied for an order of possession on the basis of the mutual agreement to end the tenancy, the Landlord felt the matter was too urgent to wait for a hearing on that agreement. The Landlord states that on July 2, 2019 the Tenants were witnessed by another tenant in the building using a propane torch to light a barbeque propane tank. The Landlord states that this incident caused the fire department to attend the building. The Tenant agrees that the propane tank caught fire but that the Tenant only used a lighter to test the tank gas opening to

see if the unconnected tank had any propane. The Tenant states that when the tank caught fire they threw the tank on the outside yard.

The Landlord states that prior to this incident the Strata sent letters to the Landlord indicating that other tenants and owners had made several complaints about the Tenant allowing homeless persons and strangers into the building to sleep overnight in the hallway beside the Tenant's unit and in the stairwell. The Landlord states that drugs and needles were found at the Tenant's end of the building. The Landlord states that the persons complaining have concerns with their safety and health. The Tenant denies allowing any persons into the building other than their guests and that the Tenant regularly uses the back entrance to provide entry to its guests as it is close to their unit. The Tenant states that the area has a high number of homeless persons and that the presence of the needles have nothing to do with the Tenant. The Tenant states that it is unaware of anybody sleeping in the hallways.

Analysis

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

Although the Landlord's evidence of the Tenant's involvement in allowing persons into the building is weak, given the undisputed evidence of the lighting of a propane tank, I find on a balance of probabilities that the Landlord has substantiated that the Tenants are reckless about the safety of the other residents in the building, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant and put the Landlord's property at significant risk. Although the Landlord could have made its application for an order of possession from the mutual agreement to end, given the recent incident with the propane tank, I find on a balance of probabilities that it would be unfair for the Landlord to wait any longer or to wait for a notice to end tenancy for cause to take effect. I find therefore that the tenancy must end early and that the Landlord is entitled to an order of possession.

As the Landlord has been successful with its application I find that the Landlord is entitled to recovery of the \$100.00 filing fee and that the Landlord may deduct this amount from the security deposit of \$800.00 in full satisfaction of the claim.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may

be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I Order the Landlord to retain \$100.00 from the security deposit plus interest of \$800.00 in full satisfaction of the claim.

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: July 30, 2019

Residential Tenancy Branch