



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WENTWORTH PROPERTIES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with the landlord's 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 from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open for the duration of the hearing to enable the tenant to call in. The landlord's building manager and property manager attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, and to make submissions. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing.

The landlord's property manager testified that the tenant was served the notice of dispute resolution form and supporting evidence package by posting it on the door of the rental unit on August 27, 2019, the same day she received the notice of dispute resolution form from the Residential Tenancy Branch. I find that the tenant is deemed served with this package on August 30, 2019, three days after the landlord's property manager posted it, in accordance with sections 88, 89, and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to:

- 1) an order an early end to tenancy and possession; and
- 2) recover their filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below.

The parties entered into a written tenancy agreement starting May 1, 2019. Monthly rent is \$1,500.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$750.00.

The landlord's property manager testified that the tenant allowed an unauthorized guest (the "**Guest**") to stay with her starting in early July 2019. The landlord's building manager testified that the Guest is the father of the tenant's child, and that the child resides at the rental unit with the tenant.

Since the Guest's arrival, the landlord has issued multiple warning letters to the tenant for breaches of the tenancy agreement, including:

- 1) On July 5, 2019 for loud talking and music until past 4 am;
- 2) On July 31, 2019 for the Guest causing damage to the landlord's property by driving a vehicle into shrubs outside the rental premises, and abandoning the vehicle while it was left running;
- 3) On July 31, 2019 for giving keys to the rental building to the Guest; and
- 4) On July 31, 2019 for the Guest allowing a large dog to stay in the rental unit, in violation of the tenancy agreement.

The building manager testified that on August 2, 2019 she received a complaint from the unit below the rental unit that water was dripping from the ceiling. She attended the rental unit (after calling the tenant, who was out of town) and discovered that it appeared the Guest had attempted to do dishes and laundry in the kitchen sink and caused the sink to overflow.

The landlord's property manager also testified that later on August 2, 2019 the Guest became intoxicated banged on the building manager's door and windows. The building manager testified that she was frightened by this conduct and did not open the door.

The landlord's building manager testified that on August 4, 2019 she received text messages from four other tenants of the rental building advising her that the Guest was disturbing them and trying to gain access to the building.

The landlord's property manager testified that during his stay at the rental unit, the Guest ripped off wall corner protectors and door protectors in the common areas, and propped common area doors open. She testified that she has surveillance video of these actions, but none was submitted into evidence.

The landlord's property manager also testified that Guest took a garbage bin from a neighboring property, upturned it, and with the help of a garden hose attempted to scale the wall of the rental building to gain access to the rental unit, causing damage to the rental building.

The landlord also submitted a letter from an occupant of the rental building who lives on the same floor as the tenant. In it she wrote that the Guest was trying to gain access to the rental unit because he had locked himself out, and when he could not, he confronted the occupant and demanded that he be able to enter her unit, so he could climb from her balcony to his own. She refused. She wrote that the Guest was aggressive towards her, and that his conduct caused her anxiety. She wrote that the Guest slammed his fists and hands on her door and threatened her and her husband.

The occupant wrote that the police were called (she denies that she called the police). The occupant wrote that the Guest then left the hallway and gained access to the rental unit by climbing up the side of the building using a garden hose. She wrote that when the police arrived, the Guest called her and her husband "assholes, f***** douchebags, [and said] he would physically harm [them] ... because he assumed that [the occupant] was the one who called the police."

The occupant then wrote that she did not feel safe in her own building and is terrified of leaving her apartment not knowing if she is going to run into the Guest.

The landlord's property manager testified that as of September 1, 2019, the Guest moved out of the rental unit (along with the dog). However, she testified that the tenant told her that the Guest still has keys to both the rental building and the rental unit (the rental building uses mechanical locks on the entry doors, as opposed to fobs). The landlord's property manager is not confident that Guest will not return, as he still has keys and as his child lives still lives at the rental unit.

The landlord's property manager testified that on September 5, 2019, she received complaints regarding noise coming from the rental unit. She testified that a party occurred at the rental unit from 12:00 pm to 5:00 am.

Analysis

Early Termination of Tenancy applications are governed by section 56(2) of the Act, which reads:

Application for order ending tenancy early

- 56(2)** 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.

Rule of Procedure 6.6 sets out the standard by which I am apply when assessing whether to grant the relief sought in an application. It states:

6.6 The standard of proof and onus of proof

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 most circumstances this is the person making the application.

As such, the landlord must satisfy me, on a balance of probabilities, that it has fulfilled the requirement set out in section 56(2) of the Act.

After considering the evidence presented and the testimony of the landlord's property manager and the landlord's building manager, I find that the landlord has discharged its evidentiary burden and demonstrated that an order for an early end to the tenancy is required.

I accept the uncontroverted evidence the landlord's representatives. I find that the conduct of the Guest as against the building manager and the occupant who wrote the letter meets the standard of unreasonable disturbance set out at section 56(2)(a)(i). I find that the noise violations of July 5, 2019 and September 5, 2019 also meet the standard of unreasonable disturbance.

As such, I find that the 56(2)(a) requirement is met.

I note that the Guest has now moved out of the rental unit. Under ordinary circumstances this may indicate a lack of urgency required by section 56(2)(b) to issue an early end of tenancy. However, these circumstances differ from the ordinary. I do not find that the Guest's vacating the rental unit to guarantee that he will not return to the rental building. I come to this conclusion based on the facts that he did not return the keys to the rental building when he left, and that his son continues to reside at the rental unit.

I find that it would be unfair to the occupant of the rental unit on the same floor as the tenant to be required to wait the amount of time proscribed by section 47 (One Month's Notice) to end the tenancy, in light of the anxiety and fear the Guest has caused this occupant.

As such, I find that the 56(2)(b) requirement is met.

Pursuant to section 56 of the Act, I order that:

- 1) the tenancy between the landlord and tenant is terminated effective seven days of service of this decision and order on the tenant by the landlord; this date; and
- 2) the landlord is entitled to an order of possession in respect of the rental unit, effective seven days after she serves this decision and attached orders on the tenant.

As the landlord has been successful in her application, pursuant to section 72, I order that the tenant reimburse her the filing fee. Pursuant to section 72(2) I order that the landlord may withhold this amount from the tenant's security deposit. The landlord must deal with the balance of the security deposit (\$650.00) in accordance with the Act.

Conclusion

The landlord is entitled to the relief she seeks, including the reimbursement of her filing fee.

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: September 10, 2019

Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.gov.bc.ca/landlordtenant) has information about:

- How and when to enforce an order of possession:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to enforce a monetary order:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to have a decision or order corrected:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the correction process
- How and when to have a decision or order clarified:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the clarification process
- How and when to apply for the review of a decision:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the review process
Please Note: Legislated deadlines apply

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.gov.bc.ca/landlordtenant

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#RTB-136 (2014/12)

