



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1147058 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

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.

Although this hearing started at 9:30 a.m. as scheduled, the tenant AL did not attend the hearing until 9:44 a.m. AL ("tenants") attended the hearing on behalf of both tenants. I summarized to the tenant what had taken place before she entered the hearing. NS ("landlord") represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant AL confirmed receipt of the landlord's dispute resolution application ('Application') and evidence package, which was personally served to MS. In accordance with sections 88 and 89 of the Act, I find that the tenants were duly served with the Application package. The tenants did not submit any written evidence for this hearing

Issues(s) to be Decided

Is the landlord entitled to an early end of tenancy and an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This fixed term tenancy began on June 12, 2019, with monthly rent set at \$1,150.00, payable on the first of every month. The security deposit was set at \$575.00. The tenants still reside in the basement portion of the home.

The landlord is seeking the early end of this tenancy for several reasons. The landlord testified in the hearing that the tenants have failed to pay rent for this tenancy, and a 10 Day Notice for Unpaid Rent has been issued to the tenants. Additionally, the landlord listed several incidents

for why this feel this tenancy should end on an early basis. The landlord confirmed in the hearing that no other Notices to End Tenancy have been issued to the tenants other than the 10 Day Notice for Unpaid Rent.

The landlord provided a summary of the incidents in their written evidence package, as well as during the hearing. The landlord testified that they have CCTV footage of the tenant MS breaking into another tenant's vehicle on August 31, 2019. The landlord testified that MS's cane, or a cane that resembled his cane, was found in the vehicle. At the time of the hearing MS had not been charged for this incident. The tenants deny any involvement with this break in. The landlord included a statement from a neighbour in their evidentiary materials expressing concern about the tenants and their behaviour.

The landlord also listed several bylaw infractions by these tenants including allegations of the tenants' dog biting the upstairs tenant, too many unauthorized occupants in the rental unit, noise disturbances from the rental unit during late hours from 2:00 a.m. to 5:00 a.m., unauthorized persons sleeping in limited common property such as the laundry room, and evidence of the tenants vaping or smoking in their rental unit. The landlord provided the police file numbers for these incidents, and testified that the police have attended and have removed people from the rental unit. The landlord also testified that bylaw officers are currently investigating the reported incidents.

The tenants dispute all of the landlord's allegations, stating that no charges have been laid, nor have the incidents been proven. The tenants dispute that any other occupants or tenants reside in the rental unit other than themselves. The tenants testified that the upstairs tenant would act in a manner that would antagonize their dog, and that the reports are false.

Analysis

The landlord, in their application, requested an Order of Possession on the grounds that the tenants have failed to pay rent as required, in addition to several incidents that have taken place during this tenancy that involve the tenants and other persons that the tenants have allowed on the property.

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 of the *Act* for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56 of the *Act*, I need to be satisfied that the tenants 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 reasons cited in the landlord's application would need to be supported by sworn testimony and/or written, photographic or video evidence in order to qualify for the first part of section 55 of the *Act*. The landlord provided sworn testimony, as well as submitted in evidence a written statement from a neighbour, police file numbers and details of the reported incidents, as well as documented proof of the landlord's attempt to end this tenancy by way of a 10 Day Notice for Unpaid Rent.

The landlord confirmed that the tenants have not been served with a 1 Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*, nor has the landlord applied for an Order of Possession pursuant to any Notices to End Tenancy. The landlord, in their application, is attempting to obtain an early end to tenancy as they feel that the tenants have engaged in repeated incidents that have caused the landlord and neighbouring tenants and occupants concern.

Separate from whether there exist reasons that would enable a landlord to obtain an Order of Possession for Cause, the second part of section 56 of the *Act* as outlined above would only allow me to issue an early end to tenancy if I were satisfied that it would be unreasonable or unfair to the landlord to wait until an application to end the tenancy for cause were considered. In this case, I find that the landlord's application falls well short of the requirements outlined in section 56 of the *Act*. An early end to tenancy is to be used only in situations where there is a compelling reason to address the dispute very quickly and when circumstances indicate that the standard process for obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause would be unreasonable or unfair.

Although the landlord testified that the tenants were served with a 10 Day Notice to End Tenancy, the landlord did not make an application for an Order of Possession pursuant to that 10 Day Notice. Despite the landlord's concerns about the tenants' behaviour, the landlord has not issued the tenants any 1 Month Notices to End Tenancy for Cause. The landlord's failure to pursue an Order of Possession pursuant to a 10 Day Notice or a 1 Month Notice does not

automatically qualify them to apply under section 56 of the *Act*. Although the landlord has provided supporting evidence to demonstrate that the police have attended to deal with issues caused by the tenants, the tenants dispute that they have been involved in these incidents. I find that at the time of the hearing, neither tenant had been charged with the described incidents the landlord submitted for this hearing.

Although I am sympathetic to the landlord about the concerns that they have raised as part of their application, I find that the landlord failed to provide sufficient and compelling evidence to support why the standard process of obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause to be unreasonable or unfair. For these reasons, I dismiss the landlord's application for an early end to this tenancy.

Conclusion

I dismiss the landlord's application without leave to reapply. This tenancy continues until ended in accordance with the *Act*.

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 30, 2019

Residential Tenancy Branch