



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for an Order of Possession to end the tenancy early pursuant to Section 56 of the *Act*, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord and a friend/assistant (the “Landlord”) were present for the hearing as was the Tenant. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Tenant stated that he was unsure of the evidence served as he did not look through all of the information.

However, I accept that the Landlord served the Tenant with the same evidence that was submitted to the Residential Tenancy Branch as confirmed by the Landlord at the hearing. The Landlord also submitted a proof of service document and a photo of the package posted on the Tenant’s door. Therefore, the Landlord’s evidence is accepted and will be considered in this decision. The Tenant did not submit any evidence prior to the hearing.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

On the Application for Dispute Resolution the Landlord listed the dispute address as the lower level unit. However, during the hearing she clarified that the tenancy agreement was for one bedroom in the lower level unit. The Landlord confirmed which bedroom the Tenant rents and therefore the application was amended to add the bedroom number to the address of the rental unit. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

Issues to be Decided

Is the Landlord entitled to an Order of Possession to end the tenancy early pursuant to Section 56 of the *Act*?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy which were also confirmed by the tenancy agreement submitted into evidence. The tenancy started July 30, 2019. Monthly rent is \$600.00, and the Tenant paid a security deposit of \$300.00 at the start of the tenancy. The Tenant rents a room in a lower level suite in the Landlord's home.

The Landlord testified that there were concerns regarding the Tenant since early in the tenancy and that the Tenant had agreed on several occasions that he would move out. She stated that the Tenant makes a lot of noise in the rental unit and has caused a lot of damage on the residential property. The Landlord stated that the Tenant yelled at her and her son and the police were called. She stated that although the Tenant told the police he would move out, he did not do so.

The Landlord stated that on September 17, 2019 she noticed that the laundry room had a strong and unpleasant odour of ammonia. She stated that after looking into the odour she became ill and called the police who sent an ambulance and a firetruck. The Landlord testified that it was determined that there were no issues with the rest of the home and that the smell/wet area was isolated to the laundry room.

The Landlord submitted that a plumber attended the home and after providing 24 hours notice entered the Tenant's bedroom as no plumbing/leakage issues were found in the

laundry room. Instead, she stated that it was determined that the leaking likely came from the Tenant's bedroom as the wall between the laundry room and the bedroom was also wet.

The Landlord stated that in the Tenant's bedroom they found a hole in the wall and the plumber reached into the hole and found a bottle that smelled of urine. The Landlord stated that there was urine in the hole that was leaking into the laundry room. She also noted that the hole was not in the bedroom at the start of the tenancy and that there was no hole on the laundry room side, instead with the only access to the hole from inside the Tenant's bedroom.

The Landlord submitted into evidence a video clip of the plumber who attended to find out the cause of the leak. In the video the plumber stated that they ran the washing machine and did not find any issues. He also stated that there was no plumbing issue found and instead that the issue seems to be urine leaking onto the carpet. In a second video clip submitted into evidence by the Landlord the plumber is seen holding a bottle which the Landlord stated was found in the hole in the wall of the Tenant's bedroom. The Landlord asks if that is the cause of the leaking and the plumber confirms that he thinks so.

The Landlord also provided a letter dated September 20, 2019 signed by the plumber who attended the home. In the letter the plumber writes that the source of the problem was found to be the following:

...a bottle of urine that was dumped and left inside of the wall, in a hole in the drywall. The problem in the laundry room has a strong smell of ammonia/old urine and certainly came from the bottle in the wall.

Included in the Landlord's evidence is a report from the fire department dated September 17, 2019. In the report it is written that they attended the home due to reports of a gas smell and an occupant feeling ill. The report indicates that there was no gas found and instead notes that the laundry room area had a strong smell which was noted as possibly urine or a dead animal.

The Landlord also submitted two witness letters dated September 20, 2019 and September 22, 2019 in which the witnesses confirm a strong urine smell in the laundry room and their belief that the Tenant is the cause of the urine leak and odour

The Landlord submitted a third undated witness letter which references an incident that occurred on September 3, 2019. The writer states that they witnessed the Tenant yelling and screaming at the Landlord while she was serving the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") and that when interjecting the Tenant threatened violence towards the writer of the letter.

The Tenant testified that the hole was already in the bedroom at the start of the tenancy and that he has not been involved in any damage to the rental unit. He stated that he had noticed the smell that appeared in the laundry room and that it was likely a blockage in the plumbing or a leaking pipe from upstairs. He stated that the smell was not caused by his urine and was nothing to do with him.

The Landlord mentioned additional concerns regarding the Tenant such as breaking locks to the laundry room and a knife seen in the Tenant's bedroom. The Tenant disputed these claims and noted that the Landlord has been going into his room without permission. He also noted that he keeps kitchen utensils in his bedroom.

The Tenant testified as to constant harassment from the Landlord and stated that the Landlord is a liar who has fabricated all reports to the police. The Tenant stated his belief that the Landlord is trying to damage his reputation through fabricating accusations.

Analysis

The Landlord applied to end the tenancy early pursuant to Section 56 of the *Act*. Section 56(2) of the *Act* provides the following circumstances in which a landlord may apply to end a tenancy early:

- (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.

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Therefore, in this matter the Landlord has the burden of proof.

The parties presented differing testimony regarding the Tenant's responsibility for the urine leak in the laundry room. When parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to support their position.

In this matter, the Tenant denied any responsibility as to the urine leaking into the laundry room. However, I find that Landlord's evidence to be reliable and find that it supports her testimony that the leak was coming from a hole in the wall that was only accessible through the Tenant's bedroom which he rents. I find that the witness statements, video clips and plumber statement corroborate the Landlord's testimony that the issue in the laundry room was caused by urine from the Tenant's bedroom.

Regardless of whether this was caused directly by the Tenant or a guest of the Tenant, I find that the issues caused cause significant interference and unreasonable disturbance to the other occupants and the Landlord, have seriously jeopardized the health or safety

of another occupant or the Landlord and has put the Landlord's property at significant risk. Although unable to establish whether the hole was in the bedroom wall at the start of the tenancy or not, I find that the damage caused by the urine in the hole is significant in terms of risk to others and risk to the property.

While the Tenant testified that the damage in the laundry room is likely caused through a leaking pipe or other plumbing issue, I find that the evidence of the Landlord refutes this. The statement from the plumber was clear that the urine leak was coming through the hole in the Tenant's bedroom.

The Tenant also testified as to harassment from the Landlord and stated his belief that she is intentionally fabricating stories to damage his reputation. I fail to find sufficient evidence to support his testimony. Instead, as stated, I find that the Landlord's evidence supports her testimony regarding the events that occurred and find that the evidence of the Landlord directly contradicts the Tenant's testimony that he had nothing to do with the urine leak into the laundry room. Instead, given the hole in the Tenant's wall, the findings of the plumber, and that the issue was not determined to be occurring from a common area of the residential property, I find it likely that the Tenant is responsible for the issue.

As stated in Section 56(2)(b) of the *Act*, to end the tenancy early a landlord must also establish that it would be unfair or unreasonable to wait for a One Month Notice to take effect. In this matter, I am satisfied that the Landlord has established that it would be unreasonable to wait for a notice to end tenancy to take effect. I find that the damage caused from the urine leak are serious and not only put the Landlord's property at risk, but also the health and safety of others in the home. As it is not clear why there is urine in the wall of the Tenant's bedroom, I find that there is potential for this issue to continue and cause further damage and/or safety concerns.

Therefore, I find that the Landlord has met the burden of proof to establish that she is entitled to an Order of Possession to end the tenancy early, pursuant to Section 56 of the *Act*. I grant the Landlord a two-day Order of Possession.

As the Landlord was successful with the application, pursuant to Section 72 of the *Act* I award the recovery of the filing fee in the amount of \$100.00. The Landlord may retain this amount from the security deposit.

Conclusion

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

Pursuant to Section 72 of the *Act*, I grant the Landlord the recovery of the filing fee in the amount of \$100.00. The Landlord may retain this amount from the security deposit which means that the security deposit held by the Landlord is now \$200.00.

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: October 16, 2019

Residential Tenancy Branch