



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an early end to this tenancy and an Order of Possession, pursuant to section 56 of the Act, and to recover the \$100.00 cost of her Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 27 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about the process. During the hearing the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed 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.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that she served the Tenant with the Notice of Hearing documents in person on October 5, 2019 by handing it to the Tenant's adult co-tenant, T.K. The Landlord provided a proof of service document, and she said she was aware that T.K. gave the Application documents and Notice of Hearing to the Tenant when the Tenant was next at the residential property. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act.

Preliminary and Procedural Matters

The Landlord provided her email address at the outset of the hearing, but did not have an email address for the Tenant. The Landlord confirmed her understanding that the Decision would be emailed to her and mailed to the Tenant at the rental unit address, and any Orders would be sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord Entitled to End this Tenancy Early and to Obtain an Order of Possession?
- Is the Landlord Entitled to Recover the \$100.00 Application Filing Fee from the Tenant?

Background and Evidence

The Landlord submitted a tenancy agreement signed by the Parties. The Landlord confirmed the following details of the tenancy. The rental unit is one of multiple suites in a duplex. The periodic tenancy began on January 15, 2018, with a monthly rent of \$450.00, due on the first day of each month. The Landlord confirmed that the Tenant paid the Landlord a security deposit of \$200.00, and no pet damage deposit. The Landlord said that the Tenant had not paid any rent for October 2019.

In the hearing, the Landlord said that the reason she seeks an early termination of the tenancy and an Order of Possession is because the Tenant was arrested in the residential property on October 1, 2019 for possessing, accessing and importing or distributing child pornography.

The Landlord said that two of the Tenant's co-tenants witnessed the police execute a warrant and arrest the Tenant on October 1, 2019. The Landlord said that the other tenants have expressed their discomfort with continuing to live there, if the Tenant is not evicted.

The Landlord said that there are tenants on the residential property with relatives who have children who come to visit; therefore, she said the Tenant's presence on the residential property is a concern for the welfare of these children. The Landlord also said that she is a single-mother with a four-month old child, and that she has to take the child with her wherever she goes. She said she does not feel comfortable attending the residential property with her child anymore, if the Tenant is there.

The Landlord said that there are three young women who live in the lower suites and with whom the Tenant shares the laundry facilities. The Landlord said, "They are in there alone, they come home late alone, and that is a bit of a worry."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

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 this case, the Landlord.

Section 56 of the Act establishes grounds on which a landlord may apply for dispute resolution to request an early termination of a tenancy and order of possession. In order to grant such an order, I need to be satisfied that the Tenant has done any of the following:

1. significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. put the landlord's property at significant risk;
4. has 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;
5. has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
6. 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 tenancy under section 47 to take effect.

In this case, given the concern of the other tenants and landlord about their safety and security in the Tenant's presence, I find that the Landlord has established on a balance of probabilities that the Tenant has done actions 1, 2 and possibly 4 in the above noted list. I, therefore, find that the Landlord has met the burden of proof in this matter.

I further find, given the expressed concerns and diminishment of quiet enjoyment of the residential property, that it would be unreasonable and unfair for the Landlord or other occupants to wait for a one month notice to end tenancy to take effect. Accordingly, and pursuant to section 56(1) of the Act, I Order that the tenancy is ended two days from the date on which the Order of Possession is deemed served on the Tenant. I grant the Landlord an Order of Possession, which must be served on the Tenant, and is effective two days after the deemed date of service. Further, I grant the Landlord recovery of the \$100.00 Application filing fee, and I authorize the Landlord to deduct this from the Tenant's security deposit.

Conclusion

The Landlord has established on a balance of probabilities that the Tenant's behaviour warrants an early termination of the tenancy and an Order of Possession, pursuant to section 56 of the Act. Accordingly, I Order that the tenancy is ended two days from the date on which the Order of Possession is deemed served on the Tenant.

I grant the Landlord an Order of Possession, which must be served on the Tenant and which is effective two days from the date of the deemed service on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 25, 2019

Residential Tenancy Branch