



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:04 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing along with the property manager and his counsel. All parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed that the landlord, the property manager, his counsel and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served with the landlord's application for dispute resolution package and evidence on March 19, 2020, by way of posting the package on the tenant's door. In accordance with sections 88, 89, and 90 of the *Act*, I find the tenant deemed served with the landlord's Application and evidence package on March 22, 2020, 3 days after posting. I find that the landlord has met the service requirements for this expedited hearing. The tenant did not submit any written evidence for this hearing.

Preliminary Issue –Landlord's Additional Evidence Package

The landlord testified that a further evidence package was served by registered mail to the tenant on March 26, 2020 as this document was obtained later. In accordance with

section 88 and 90 of the Act, the package is deemed served 5 days later, on March 31, 2020, which is the date of the hearing.

Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

I am not satisfied that the tenant had the opportunity to review this additional document. I find that there would be undue prejudice to tenant by admitting the landlord's additional evidence. On this basis, this evidence will be excluded for the purposes of this hearing.

Issues(s) to be Decided

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

Is the landlord entitled to recover the filing fee for this application from the tenant?

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

Counsel for the landlord provided the following submissions. This tenancy began in April of 2019 when the landlord's ex-partner entered into a verbal agreement with the tenant to allow the tenant to reside there on a one month basis. Since that time, the landlord and his partner have separated, and the landlord took full possession of the rental unit. The tenant has continued to reside in the rental unit, despite not paying any rent to the current landlord. The landlord served the tenant with a 10 Day Notice for Unpaid Rent on March 5, 2020 for failing to pay the monthly rent, which the landlord testified to be \$600.00 per month.

The landlord filed an application for an early end of this tenancy on an expedited basis due to the nature of the incidents that have taken place. The tenant resides in the bottom portion of the duplex, while other tenants reside in the upper portion.

The primary reason the landlord is seeking an early end of this tenancy is due to the significant risk to the health and safety of the other occupants in the duplex, as well as the landlord's property. An incident took place on February 10, 2020, which resulted in a mandatory evacuation of the entire duplex for all occupants for 8 days due to the matter being deemed a HAZMAT threat. The upstairs tenant, and her children, experienced eye irritation and nausea due to noxious fumes in their rental unit, and immediately called emergency health services. The fire department was dispatched, and attempted to enter the downstairs unit, which they eventually accessed through a window. Upon entering the unit, they discovered that the tenant had stored 6 jerry cans full of gasoline inside the rental unit, next to the furnace. One can had leaked gasoline onto the concrete floor. The extraordinary risk to the other tenants and occupants, as well as the landlord's property, was made more serious by the fact that the tenant had changed the locks and barricaded the doors. The landlord testified that this behaviour dates back to at least August 2019, and the landlord has had difficulty accessing the rental unit due to the previous threats and refusal of the tenant to allow the landlord access as allowed under the *Act*.

The landlord is concerned for the immediate safety of the other tenants due to this incident, and the ongoing failure of the tenant to abide by the tenancy agreement and *Act*, as well as the contravention of rules and bylaws.

Analysis

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 a notice to end the tenancy were given under section 47 for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant 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.

Based on the evidence and sworn testimony before me, I find that sufficient evidence has been provided to warrant an end to this tenancy for several of the reasons outlined in section 56, as outlined above. I find that the tenant has seriously jeopardized the health or safety or a lawful right or interests of the landlord and other occupants, as well as put the landlord's property at significant risk in this multi-dwelling home. I find that the tenant had acted in a deliberate and careless manner by storing excessive amounts of a highly flammable and noxious substance inside the rental unit. Furthermore, I find that the tenant has prevented the landlord or any other parties from accessing her rental unit in the case of an emergency, such as the incident on February 10, 2020, even after the landlord had previously expressed his concerns. As the tenant's behaviour has, and could again seriously jeopardize the health and safety of all residents in this multi-dwelling home, the tenant's actions are extremely concerning.

The second test to be met in order for a landlord to obtain an early end to tenancy pursuant to section 56 of the *Act* requires that a landlord demonstrate that "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" for cause to take effect. On this point, I find that the reasons cited by the landlord for circumventing the standard process for ending a tenancy for cause meet the test required to end this tenancy early as this matter pertains the immediate safety of all the other occupants who reside in this home.

The tenant did not attend the hearing, nor did the tenant provide a response to the landlord's application disputing the landlord's claims. I find that the landlord has provided sufficient evidence to support that the behaviour and actions of the tenant have caused the landlord and other tenants and occupants to become concerned about the safety of all those who reside there, which also impacts their right to quiet enjoyment of their home. The main reason for the urgent nature of this application, though, is the

potential for significant damage to this property combined with the immediate risk to the safety of all occupants. I find that the landlord has provided sufficient evidence to support all of this.

Under these circumstances, I find that it would be unreasonable and unfair to other tenants in this home and the landlord to wait for a 1 Month Notice to End Tenancy for Cause to take effect. I find that the landlord has provided sufficient evidence to warrant ending this tenancy early, and accordingly I issue a two day Order of Possession to the landlord.

As the landlord was successful, I allow the landlord to recover the filing fee for this application.

Conclusion

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

I issue a \$100.00 Monetary Order in favour of the landlord, which allows the landlord to recover the filing fee. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 31, 2020

Residential Tenancy Branch