



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Okanagan Métis & Aboriginal Housing Society
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, pursuant to section 72.

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

At the outset of the hearing, the landlord confirmed the actual name of the landlord. As there was no opposition, the landlord's name was amended to include the proper name of the landlord.

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

This month-to-month tenancy began on September 1, 2019 with monthly rent set at \$950.00, payable on the first of every month. The landlord collected a security deposit in the amount of \$475.00, which the landlord still holds.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid rent on March 3, 2020, with an effective date of March 13, 2020. The landlord testified that the tenant has not paid any rent for March or April 2020.

Furthermore, the landlord is seeking the early termination of this tenancy as the tenant has, and continues to, store an excessive number of items on the stairs and patio, and has allowed an excessive number of occupants to stay in his 1 bedroom unit. The landlord testified that an inspection was performed, and the landlord discovered at least 10 unauthorized parties that the tenant has allowed to stay in his rental unit. The landlord also submits that the tenant has visitors looking for him, causing concern from the other residents in the building. The landlord submitted numerous letters from other tenants, as well as photos in their evidentiary materials. The landlord submits that these parties are intoxicated, and pose a threat to the landlord's property, as well as other residents.

The tenant does not dispute that he has visitors as he is 72 years old, and requires the assistance of others to assist him with matters such as grocery shopping. The tenant testified that he is in the process of cleaning his rental unit, and moving items to storage. The tenant does not dispute that he has failed to pay the rent, stating that he has had trouble going to the bank.

Analysis

The landlord, in their application, requested an Order of Possession as the tenant poses a threat to the landlord, the landlord's property, and other residents. The landlord is also concerned the tenant has failed to pay the rent for March or April 2020.

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 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.

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, photos, letters from other residents, as well as a copy of the 10 Day Notice for Unpaid Rent served on the tenant.

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 a 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 I find that the landlord testified that the tenant was served with a 10 Day Notice to End Tenancy on March 3, 2020, 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 tenant's behaviour, the landlord has not issued the tenant 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 tenant's behaviour has caused issues for the landlord and other tenants, 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.

As the landlord was not unsuccessful in this application, I dismiss the landlord's application to obtain the recovery of his filing fee from the tenant.

Conclusion

I dismiss the landlord's application in its entirety. 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: April 9, 2020

Residential Tenancy Branch