



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

In this dispute, the landlord applied for an order ending a tenancy early, pursuant to section 56 of the *Residential Tenancy Act* (the “Act”). He also sought recovery of the filing fee under section 72 of the Act.

The landlord applied for dispute resolution on February 27, 2020 and a dispute resolution hearing was held on April 3, 2020. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant did not attend the hearing.

The landlord testified that he, along with a witness, served the tenant with a Notice of Expedited Hearing – Dispute Resolution Proceeding by attaching the notice to the door of the rental unit on March 6, 2020 at 10:45 AM. A copy of a Proof of Service document was submitted into evidence. I am satisfied that, based on the oral and documentary evidence, that the tenant was served in compliance with the Act and the *Rules of Procedure*, under the Act.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issues of this application.

Issues

1. Is the landlord entitled to an order ending the tenancy early, pursuant to section 56 of the Act?
2. Is the landlord entitled to recovery of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

The landlord testified that the tenant moved into the rental unit on January 27, 2020, and that the tenancy officially started on February 1, 2020. Monthly rent is \$1,275.00 and the tenant paid (her mother paid, it should be noted) a security deposit of \$635.00, which the landlord currently retains. There is no copy of a written tenancy agreement on file or submitted.

Problems began almost immediately after the tenant moved in, the landlord testified. The rental unit, part of a house that has a no smoking rule, began to fill with cigarette smoke. The smoke circulated throughout the house into the other neighbouring rental unit, where the neighbour had a difficult time. She is asthmatic, and cigarette smoke poses medical issues for her. The landlord and his assistant notified the tenant that as per the tenancy agreement, there is no smoking. But it was to no avail: the tenant's smoking continued.

The neighbour attempted to speak to the tenant again about the cigarette smoking, at which point (in late January 2020) the tenant's boyfriend stepped into the picture. The boyfriend is described as "very threatening [and] very aggressive" to the other tenants. When the neighbour spoke to the tenant, the boyfriend stated, in a threatening manner, "you've got dogs . . . I'll take care of them." The neighbour is, according to the landlord, "terrified to go back" to her home.

On February 2, 2020, the smoke alarms went off in the early morning hours and the fire department attended. It was determined that a smoke bomb had been thrown through the house's lower window and into an area of the home reserved for the landlord when he is in town. Extensive damage resulted from the smoke bomb. Because of the smoke bomb, which the landlord alleges was thrown by the tenant or an individual who resides with the tenant, the neighbour was terrified, and in fact went to live with family elsewhere. She is also seeing victim services. Later that day, the landlord gave a notice to end the tenancy to the tenant. A copy of this notice was submitted into evidence.

On February 10, the landlord's assistant went to the rental unit to inspect it, and the tenant's boyfriend confronted the assistant. The boyfriend was "very aggressive and verbal." During the inspection, the assistant noticed that the smoke detector had been removed.

A few weeks later, on February 26, the landlord attended to the property to conduct a final inspection (the tenant had not disputed the notice to end tenancy at this point), and

this was when the landlord met the tenant's boyfriend for the first time. As he approached the rental unit to speak with the tenant, the boyfriend "came rushing up to me, right up to my face," the landlord testified. The boyfriend said, "Who the fuck are you? What are you doing on my property?" He then said, "get the fuck away," whilst blocking the landlord's path to the tenant. The tenant then got into a car with a few other people and left.

At this point, the landlord observed that the garage door was open, and the garage appeared to have been robbed and trashed. There was significant damage and items were missing. The garage has had to be boarded up and all the windows are boarded. Photographs of some of the plywood covering windows were submitted into evidence.

Analysis

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.

Section 56 (1) of the Act permits a landlord to make an application for dispute resolution to request an order (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit.

In order for me to grant an order under section 56 (1), I must be satisfied that

- (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.

In this case, the landlord provided oral evidence, along with copies of photographs and a letter to the local police, which paints a picture of flagrant violation of the tenancy agreement with smoking, which adversely affects the physical well-being of the other occupants. The removal of the smoke detector puts the landlord's property at significant risk, and especially so given the tenant's (and her boyfriend's) propensity to smoke inside the rental unit. Finally, including the boyfriend's various aggressive behavior and speech, the tenant's boyfriend's threat to kill the neighbour's dogs is, I find, an unreasonable disturbance to the neighbouring occupants. I also find that the boyfriend – who is a person permitted on the residential property by the tenant – threatening to kill the dogs is a criminal act, and has adversely affected the quiet enjoyment, security, safety and well-being of another occupant of the residential property.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his claim that the tenancy must end early. Based on the tenant's and her boyfriend's egregious behavior, it would, I conclude, be unreasonable and unfair to the landlord and the other occupants to wait for a notice to end the tenancy under section 47 to take effect.

I order that the tenancy is ended immediately, as of April 3, 2020. Further, pursuant to section 56, I grant the landlord an order of possession of the rental unit; the order will be effective two (2) days from the date by which it is served on the tenant.

Finally, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant his claim for reimbursement of the filing fee of \$100.00.

Pursuant to section 38 of the Act, I order that the landlord may retain \$100.00 of the tenant's security deposit in full satisfaction of this award.

Conclusion

The landlord's application is granted.

I hereby order that, pursuant to section 56, the tenancy will end effective today.

I hereby grant the landlord an order of possession, under section 56 of the Act, and which must be served on the tenant and is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia, pursuant to section 4(3) of [*Residential Tenancy \(COVID-19\) Order*](#), MO 73/2020.

This decision is final and binding and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: April 3, 2020

Residential Tenancy Branch