



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capital Region Housing Corporation
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 termination of tenancy and Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant and the landlord's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenant was served with the landlord's application for dispute resolution by posting the application on the tenant's fence on May 15, 2020. Both parties agree that the tenant received the landlord's application on May 15, 2020. I find that the landlord's application for dispute resolution was served on the tenant in accordance with section 89(2) of the *Act*.

Preliminary Issue- Adjournment Request

After the landlord's agent set out the landlord's case for an emergency early end to tenancy, the tenant requested an adjournment due to hospitalization. The tenant testified that she was hospitalized from May 23-27, 2020. The tenant did not enter into evidence any documentation to support the above hospitalization. The tenant testified that she did not upload evidence before May 23, 2020 because she did not know what evidence would support her claim.

I asked the tenant what evidence she would seek to provide if an adjournment was granted. The tenant testified that she would ask her social worker to provide a letter stating that the tenant was actively trying to regain custody of her children and that if she is not evicted, her children could potentially live in the subject rental property.

The tenant testified that she would also seek to get a letter from a women's shelter stating that because the tenant's abuser is currently in jail, she does not qualify for emergency assistance because she is not currently in danger.

During the hearing I declined to adjourn the hearing because:

- the tenant did not prove that she was hospitalized or the dates of that hospitalization; and
- the evidence the tenant testified she would provide if the hearing were adjourned would not have a material outcome on my decision. I accept the oral testimony of the tenant regarding her children and her inability to qualify for emergency aid. An adjournment would therefore not be required to provide a fair opportunity for the tenant to be heard.

Issues to be Decided

1. Is the landlord entitled to an early termination of tenancy and Order of Possession, pursuant to section 56 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2019 and is currently ongoing. The subject rental property is subsidized housing and the tenant's portion of rent is \$546.00 payable on the first day of each month. A security deposit of \$700.00 was paid by the Ministry on the tenant's behalf to the landlord. A

written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that a previous Residential Tenancy Branch hearing occurred on March 12, 2020 and the landlord was awarded an Order of Possession pursuant to a One Month Notice to End Tenancy for Cause served on the tenant. The landlord's agent testified that the tenant was not evicted due to the changes in the Residential Tenancy Branch legislation and the Provincial State of Emergency.

Both parties agree that on May 14, 2020 the tenant was assaulted by her guest, the police were called, broke down the tenant's front door with guns and tasers drawn. The tenant's guest was tasered by police and taken into custody where he currently remains.

The landlord's agent testified that in addition to the above incident, since the March 12, 2020 hearing the tenant has continued to have many guests attend at the subject rental property. The tenant and her guests frequently:

- play loud music at all hours of the day and night;
- yell and scream at each other and the neighbours;
- damage the subject rental property; and
- leave garbage outside the subject rental property.

The tenant testified that her guests were the ones playing loud music, yelling and screaming and leaving garbage, not herself.

The landlord's agent testified that the tenant has caused significant damage to the front door and railing which were damaged when the police broke the door down. The landlord's agent testified that the landlord is concerned about the level of damage inside the home.

The landlord's agent testified that the tenant has left piles of garbage outside of her unit.

The landlord's agent entered into evidence five emails she received from five different neighbours regarding the tenant and the May 14, 2020 incident and other incidents which have occurred since the March 12, 2020 hearing.

Email from tenant one states in part:

....the police were called then we had to listed to 30 minutes of yelling, screaming, swearing, the boyfriend being tazered, wrestled to the ground, thrown in a police car, smashing his head into the window from inside and the tenant yelling and screaming at the police officers. There are young children in the complex, my neighbors young son woke up to this! The boyfriend yelling about the "crackheads" she's got living there, her yelling at the police about taking her kids, the boyfriend yelling at the police about raping her, her telling at the police about not killing him!

We live in hear here! Fear of the people coming and going at all hours of the day and night! Fear of our things being stolen, my truck has been hone through twice and the last time the door left open to the batter was dead when I discovered it. There are drug deals happening in the driveway and at least 4 additional people living in the unit. People climb in the windows....

Email from tenant two states in part:

....I've observed a guy climbing through their front window and different individuals coming and going at all hours. The police are constantly being called and I'm worried for our safety. I have a constant fear of being broken into....

Email from tenant three states in part:

....Prior to today [May 14, 2020] we have recently seen ambulance and police on a constant basis. The pictures I have attached are of a man who is currently living there who was leaving as I was writing this email.. and the second picture is of her front door with the hand railing from inside her unit laying in her walkway...

Email from tenant four states in part:

This morning about 9:30 there were several police cars and an ambulance outside [the tenant's unit].
Beating each other up, being so violent that he had to be tazed.
This is worse than the news.
The cops were gone by 10.
At 11:30 2 more police cars and 2 police officers outside their door.

I am tired of this and scared.

We shouldn't have to live in danger.

They are loud, dirty and very scary.

My daughter is emotionally drained. She is scared to go outside without me, even just to the garbage can....She should be able to go outside!!!!.... YOU NEED TO HELP US. This is not ok.

Emails from tenant five state in part:

We had a lot of noise over the weekend next door. All day Saturday there was very loud excessive banging. There was a group of between 4-6 of them hanging around the mailboxes smoking. One of them was at the front of the boxes touching and jiggling the boxes.... We've seen an array of different people coming and going all weekend. They leave through the backdoor. They will come and go when [the tenant] is not even there so one can assume they are living there as well. Saturday night they were in and out of the backyard all night long. When they go outside they slam the door so hard house shakes.... My son (who we finally go to sleep in his bed) was so scared he came running into our bedroom in the middle of the night (something he has never done). Last night the music and swearing and yelling in frustrated male voices started at 1030pm and us up. It was so loud it woke us from our bedroom, the furthest possible place we can be away from her madness. I phone non emergency police just before 11...

There's more and more trash outside in his yards. We have painters here this week and I feel so bad for them having to paint around the larger and larger piles of trash.

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 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, or person permitted on the property by 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.

An early end of tenancy is an expedited and unusual remedy under the *Act* and is only available to the landlord when the circumstances of the tenancy are such that it is unreasonable for a landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the *Act* for cause. At the dispute resolution hearing, the landlord must provide convincing evidence that justifies not giving full notice.

Based on the testimony of the parties and the emails entered into evidence, I find that the actions of the tenant's guests have significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. I find that the tenant's guests have frequently caused significant noise disturbances at all hours of the day and night and have created an atmosphere of fear within the residential complex.

Based on the landlord's agent's testimony and the emails entered into evidence, I find that several of the tenants live in fear of the tenant's guests. I find that it would be unreasonable and unfair to the landlord and the other tenants to wait, living in fear, for a notice to end tenancy under section 47 of the *Act* to take effect. I therefore grant a two day Order of Possession to the landlord pursuant to section 56 of the *Act*.

The tenant is not being penalized for being attacked, but her tenancy is ending because of the cumulative, longstanding actions of her guests and the fear they have inspired in the other tenants.

As the landlord was successful in its application for dispute resolution, I find that it is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

Conclusion

Pursuant to section 56 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

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: May 29, 2020

Residential Tenancy Branch