



Dispute Resolution Services

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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 termination of the tenancy and an Order of Possession pursuant to section 56 of the Act, and to recover the cost of their filing fee.

The Landlord, S.W., appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants. The teleconference phone line remained open for over 15 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 hearing 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 ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenants did not attend the hearing, I considered service of the Notice of Hearing on them. 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 Tenants with the Application, Notice of Hearing documents, and her documentary submissions by posting these documents and documentary evidence on the door of the rental unit on April 23, 2020. I find that the Tenants were deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenants.

Preliminary and Procedural Matters

The Landlords provided their email address in the Application and the Landlord, S.W., provided the Tenants' email address in the hearing. The Landlord confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession based on the early termination of the tenancy in accordance with section 56 of the Act?
- Are the Landlords entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Landlords submitted a copy of the tenancy agreement to the RTB, and in the hearing, the Landlord confirmed that the fixed term tenancy began on September 1, 2019, ran to February 29, 2020, and then operated on a month-to-month basis. The Landlord said that the Tenants paid the Landlords a monthly rent of \$1,300.00 due on the first day of each month. The Landlord confirmed that the Tenants paid the Landlords a security deposit of \$650.00 and a pet damage deposit of \$650.00.

In the hearing, the Landlord said the following about the Tenants:

The most recent incident was when they fell asleep with food on the stove and the entire house filled with smoke. I had to put the kids outside, because they were coughing and choking. When I texted [the Tenant] about it, she thought it was a joke: 'too bad, I really wanted to eat that food.' They also flooded the downstairs once; I'm sure there's damage in there from that.

The children are petrified by them – the police are at our house all the time. We can't function as a family with all this disturbance. They are fighting and screaming at each other. [The Tenant, B.L.] is in trouble with the police. My daughter saw him hit [the Tenant, C.M.] with a shoe. They are drunk all the time and they disturb the neighbours outside, too, by fighting and lying in the street.

My daughter has anxiety; we've had to increase her medication, as a result of this situation. They are noisy fighting inside and outside and it is not a healthy situation.

The Landlord also said that the Tenants “keyed” her car and sends harassing texts. The Landlord said: “He texted after I submitted this [Notice of Hearing] to him. He said I’m lying, and he said: ‘trust me you don’t want the police here.’ It was almost a threat. That was after I gave this to them. They were really upset.”

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a 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 an 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, other tenants or other occupants of the residential property to wait for a notice to end tenancy under section 47 to take effect.

In this case, I find that the Landlords have established on a balance of probabilities that the Tenants did the first four actions in the above noted list. I further find that it would be unreasonable and unfair for the Landlords and other occupants to wait for a one month notice to end the tenancy to take effect. This is because of the degree of unreasonable

disturbance that the Tenants' have inflicted on the Landlord, the Landlord's children, and other occupants of the building and neighbourhood. I, therefore, find that the Landlords have met the burden of proof in this matter.

Accordingly, and pursuant to section 56(1) of the Act, I grant the Landlord an Order of Possession, which must be served on the Tenants, and which is effective two days after the 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 Tenants' security deposit.

The Tenants are warned that they may be liable for any costs the Landlords incur to enforce the Order of Possession.

Conclusion

The Landlords are successful in their Application. The Landlords have established on a balance of probabilities that the Tenants' 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 served on the Tenants.

I also award the Landlords with the \$100.00 Application filing fee, which the Landlords are authorized to deduct from the Tenants' security deposit, in satisfaction of this award.

I grant the Landlords an Order of Possession, which must be served on the Tenants, and which is **effective two days from the date of service on the Tenants**. Should the Tenants 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: May 12, 2020